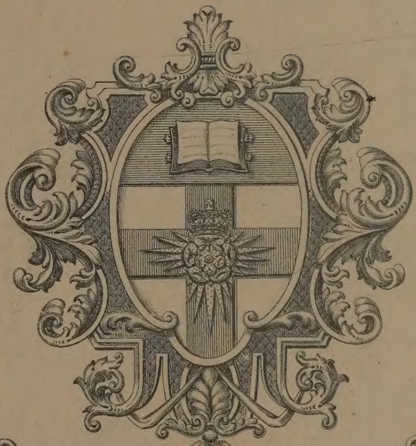

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# ACCOUNTS AND PAPERS:

*SIXTY-THREE VOLUMES.*

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STATE PAPERS—*continued.*

UNITED STATES—*continued.*

EGYPT.

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## 1893–94.

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## BEHRING SEA ARBITRATION.

# THE CASE

OF

# THE UNITED STATES

BEFORE THE

# TRIBUNAL OF ARBITRATION

CONVENED AT PARIS

UNDER THE

PROVISIONS OF THE TREATY BETWEEN THE UNITED
STATES OF AMERICA AND GREAT BRITAIN,
CONCLUDED FEBRUARY 29, 1892.

**INCLUDING THE REPORTS OF THE BERING SEA COMMISSION.**

*Presented to both Houses of Parliament by Command of Her Majesty.*
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## INTRODUCTION.

Treaty of Arbitration of 1892.

The United States of America and Great Britain entered into a Treaty on February 29, 1892, "to provide for an amicable settlement of the questions which have arisen between their respective Governments concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters"; and they resolved, by the Treaty, "to submit to arbitration the questions involved."

First five articles.

The first five articles of the Treaty, which is published in full in the Appendix,[1] relate to the organization of the Tribunal of Arbitration and to the preparation and presentation to the Tribunal of the Cases of the respective Governments. The articles which embrace a statement of the questions submitted to arbitration are as follows:

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[1] Vol. I, p. 1.

## Article VI.

Questions submitted.

"In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:

"1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

"3. Was the body of water now known as the Behring's Sea included in the phrase 'Pacific Ocean' as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea were held and exclusively exercised by Russia after said Treaty?

"4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring's Sea east of the water boundary in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

"5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring's Sea when such seals are found outside the ordinary three-mile limit?"

Questions submitted.

## ARTICLE VII.

Regulations for protection of seals.

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring's Sea, the Arbitrators shall then determine what concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such Regulations should extend; and to aid them in that determination the report of a Joint Commission to be appointed by the respective Governments shall be laid before them, with such other evidence as either Government may submit.

"The High Contracting Parties furthermore agree to coöperate in securing the adhesion of other Powers to such Regulations."

### ARTICLE VIII.

Question of fact may be submitted.

"The High Contracting Parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation."

*Modus Vivendi* of 1892.

On April 18, 1892, the Governments of the United States and Great Britain celebrated another Treaty, known as the *Modus Vivendi*,[1] whereby it was agreed that during the pendency of the Arbitration the British Government would prohibit its subjects from seal killing in the eastern part of Bering Sea, and that the United States would limit seal killing on the Pribilof Islands to seven thousand five hundred seals; and in Article V of the *Modus Vivendi* the following question of damages was submitted to the Arbitrators :

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[1] Vol. I, p. 6.

### ARTICLE V.

Question of damages.

"If the result of the Arbitration be to affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, under its purchase from Russia, then compensation shall be made by the United States to Great Britain for the use of her subjects) for abstaining from the exercise of that right during the pendency of the Arbitration upon the basis of such a regulated and limited catch or catches as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the Arbitration shall be to deny the right of British sealers to take seals within the said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens and lessees) for this agreement to limit the island catch to seven thousand five hundred a season, upon the basis of the difference between this number and such larger catch as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds.

"The amount awarded, if any, in either case shall be such as under all the circumstances is just and equitable, and shall be promptly paid."

Printed case of United States.

In accordance with the provisions of Article III of the Treaty of February 29, 1892, the Government of the United States has the honor to submit to the Arbitrators, duly appointed in virtue of Article I thereof, this Printed Case of the United States, accompanied by the documents, the official correspondence, and the other evidence on which it relies.

Division of Case.

The body of the Case is divided into two parts. The first part embraces a consideration of the first four questions contained in Article VI of the Treaty, and is introduced by a brief geographical and historical review of Bering Sea and its adjoining coasts and islands.

The second part relates mainly to the fifth question in Article VI and to Article VII, and involves a consideration of the right of protection and property in the fur-seals frequenting the Pribilof Islands, when outside the ordinary three-mile limit. These topics will require a somewhat detailed inquiry into the seal life and industry.

There will follow a brief consideration of the question of damages submitted to the Tribunal of Arbitration.

Further provision was made in the Treaty of February 29, 1892, as follows:

Further provision of Treaty.

### ARTICLE IX.

"The High Contracting Parties have agreed to appoint two Commissioners on the part of each Government to make the joint investigation and report contemplated in the preceding Article VII, and to include the terms of the said agreement in the present Convention, to the end that the joint and several reports and recommendations of said Commissioners may be in due form submitted to the Arbitrators, should the contingency therefor arise, the said agreement is accordingly herein included, as follows:

Joint commission to investigate seal life.

"Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Behring's Sea, and the measures necessary for its proper protection and preservation.

"The four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

"These reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators can not arise."

Reports of Commissioners.

The four Commissioners named by the two Governments have united in a joint report upon certain points under consideration by them; and, having failed to agree upon other points considered by them in their joint conferences, the two Commissioners on the part of the United States have united in a separate report to their own Government. The joint and separate reports are appended hereto for the information and consideration of the Tribunal of Arbitration.

Appendix.

The documents, official correspondence, and other evidence submitted with this Printed Case will be found contained in two printed Volumes and a portfolio of maps and charts, constituting together the Appendix. The Volumes will be referred to in the Case thus: "Vol. I, p. 1," and the maps and charts will be indicated by the numbers marked on them. The lithographic illustrations will be referred to by the pages of the Appendix which precede them.

The Government of the United States understands, however, that, under the terms of the Treaty, it may hereafter present "additional documents, correspondence, and evidence," and it reserves the right to do so.

# PART FIRST.

## RELATING TO HISTORICAL AND JURISDICTIONAL QUESTIONS.

# PART FIRST.

## RELATING TO HISTORICAL AND JURISDICTIONAL QUESTIONS.

### GEOGRAPHICAL SKETCH OF BERING SEA.

Location, boundaries and dimensions.

Bering Sea is the body of water lying between the Arctic Ocean and the North Pacific Ocean. It is connected with the former by Bering Strait, and with the latter chiefly by the opening which is found between the westernmost of the Aleutian Islands and the peninsula of Kamchatka. It is sometimes referred to and treated as a great landlocked sea.[1]

Generally speaking, it may be regarded as a triangle, with the vertex in Bering Strait and bounded on the east by the mainland of Alaska, on the north and west by Siberia and the peninsula of Kamchatka, while its southerly boundary is formed by the peninsula of Alaska and the line of the Aleutian Islands extended to Kamchatka.

It has an area of about 873,128 square miles.[2]

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[1] Findlay's North Pacific Directory, 2d ed., London, 1870, p. 517.

[2] Unless otherwise stated, all measurements are given in English statute miles, of which there are 69¼ to a degree.

The distance from Bering Strait to the southern boundary of the Aleutian Chain is about 1,078 miles, and its greatest width from east to west about 1,437 miles.

Bering Strait.

To the north is Bering Strait, fifty-eight miles in width, but in its narrowest portion are situated the two Diomede Islands. The shores of either side of the strait are steep and rocky.

Eastern boundary of Bering Sea.

The eastern boundary of the sea begins in a lofty hill at Cape Prince of Wales, the western limit of the continent of America and the eastern limit of Bering Strait. From Cape Prince of Wales the American coast stretches to the southward in a line broken mainly by the deep inlets of Norton Sound and Bristol Bay, between which are Cape Romanzof, Kuskoquim Bay, and Cape Newenham. The coast is generally low and marshy, no hills of any considerable size being visible. South of Bristol Bay it shoots out in a southwesterly direction into the long, narrow peninsula of Alaska, reaching westward almost to the longitude of Cape Prince of Wales. The chief rivers entering Bering Sea along this boundary are the Yukon and the Kuskokuim.

Northern and western boundary.

The northern and western boundary is in marked contrast with the eastern. It is rugged throughout, the mountains growing higher and higher as the chain, which eventually forms the backbone of the peninsula, extends south. The shore has several indentations, the chief one of which is the Gulf of Anadyr, into which flows the Anadyr River.

**Southern boundary. Peninsula of Alaska.**

The peninsula of Alaska, forming a part of the southern boundary of Bering Sea, is four hundred and fifty-six miles long and about fifty miles wide, and consists of a more or less level tract interrupted by single mountain peaks or clusters of peaks. Between these peaks, especially toward the western extremity, are low-lying, marshy gaps, which form portages, used by the natives for carrying their boats across from the Pacific Ocean to Bristol Bay.[1]

**Southern boundary. Aleutian Islands.**

The chain of the Aleutian Islands, completing the southern boundary of Bering Sea, consists of about forty principal islands and a considerable number of islets and rocks. From the peninsula of Alaska these islands sweep in a curve, convex toward the south, to the southward and westward for one thousand and seventy-three miles to the island of Attu, and thence north and west two hundred and five miles to the Commander Islands, which are regarded by some

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[1] Reclus, Nouvelle Géographie universelle, 17 volumes, Paris, 1875–1891, Vol. XV, p. 201.

Southern boundary. Aleutian Islands.

geographers as a part of the same chain.[1] From the Commander Islands to the Asiatic coast the distance is one hundred and ten miles.

The largest of the Aleutian Islands are Unimak, Unalaska, and Umnak, the two former being about seventy-five miles long. The straits or passes separating the islands are of various widths, those in the easterly half being generally narrow and but few of them available for navigation. The most important are Unimak Pass, eleven miles wide, and Amukta or "Seventy-two" Pass, forty-two miles wide. The entire chain is of volcanic origin, and lofty peaks rise from most of the islands. Some Alaskan or Aleutian crater is almost constantly in activity. More than thirty mountains have at various times been reported active, and new islands have been thrown up by volcanic action since the discovery of the region by the Russians.[2]

Islands in Bering Sea.

The chief islands lying within Bering Sea are the following: St. Lawrence, St. Matthew, Nunivak, Karaginski, and the Pribilof Islands.

Large portion very shallow.

A peculiar feature of Bering Sea is the extensive bank of soundings which stretches off for two hundred and fifty or more miles from the

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[1] Vivien de Saint-Martin, Nouveau Dictionnaire de Géographie universelle, Paris, 1879, Vol. I, p. 416; Encyclopædia of Geography, revised ed., Philadelphia, 1838, Vol. III, p. 344.

[2] Reclus, Vol. XV, p. 202; North Pac. Dir., p. 498 *et seq.*

Large portion very shallow.

American coast, rendering the easterly portion of the sea very shallow.[1] The charts show that throughout one-third of the sea the depth of the water does not, generally, exceed fifty fathoms, and they also show that the average depth of the whole sea is very considerably less than that of the adjoining ocean.[2]

Population, vegetation and commercial products.

The shores of Bering Sea are but thinly populated, the native inhabitants of those now belonging to the United States being Esquimos and Aleuts.[3] The vegetation of the coasts adjacent to Bering Sea consists mainly of rank grasses and (in the more southern parts) of alder and willow. There are no agricultural products, though the interior valleys display considerable richness of vegetation.[4] The chief commercial products of the sea and its coasts are fur-bearing animals and codfish.

## GEOGRAPHICAL SKETCH OF THE PRIBILOF ISLANDS.

Location.

The group of islands known as the Pribilof Islands is situated in the shallow part of Bering

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[1] See North Pacific Dir., pp. 517, 567.

[2] See also Wallace's Island Life, New York, 1881, p. 295, map.

[3] Reclus, Vol. XV, p. 225.

[4] North Pacific Dir., p. 5[illegible]; Encycl. of Geog., Vol. III, p. 344; Wappäus, Handbuch der allgemeinen Geographie und Statistik, Leipzig, 1855, Vol. I, part I, p. 298.

Location.

Sea, in about latitude 57° N. and longitude 170° W. It is of volcanic origin[1] and far removed from other land, the nearest adjacent points being Unalaska Island, at a distance of two hundred and fourteen miles to the southward; Cape Newenham, upon the mainland of Alaska, distant three hundred and nine miles in an easterly direction; and St. Matthew Island, distant two hundred and twenty miles to the northward.

Group consists of four islands.

The group consists, in the order of their magnitude, of St. Paul, St. George, Otter, and Walrus Islands. The first two are separated by forty miles of water. The last two are within six miles of St. Paul.

St. Paul Island.

The largest of these islands is St. Paul, situate in latitude 57° 10′ N. and longitude 170° 20′ W. It is from northeast to southwest thirteen miles long, with a maximum width of six miles. Its area is about forty-two square miles; its shore line forty-two miles. The highest hill attains an altitude of six hundred and thirty-three feet; three others exceed five hundred feet in height. The island comprises rocky uplands, rugged hills, and broad valleys, alternating with extensive bogs of moss and heather, some of which contain fresh-water ponds. Considerable stretches of sandy beach border some of the bays, but most of the shores are rocky. The photographs submitted with this Case will enable the Tribunal to form a conception of the ruggedness of the shores and of the irregularity and confusion of the lava blocks that cover them. The average height of the upland is not over one hundred and fifty feet, but three small peaks, one of which in particular has the appearance of a crater, attain a height of nearly six hundred feet.

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[1] Reclus, Vol. XV, p. 205.

St. Paul Island.

St. George Island.

About forty miles to the southeast of St. Paul lies St. George, in latitude 56° 35′ N. and longitude 169° 30′ W. Its length is ten miles, while its greatest width is about four and a half miles. It has an area of thirty-four square miles, and a coast line of thirty miles. On St. George the coast rises precipitously from the sea, and is, for the most part, a succession of cliffs, with not more than six or eight miles of low-lying shores and not over a mile of sandy beach, whereas large stretches of the shores of St. Paul are of the latter character. St. George contains two hills, more than nine hundred feet in height, and united by moderately high ground. Its general altitude is about three times that of St. Paul.

Otter Island.

Otter Island lies six miles south of St. Paul. It is the only one of the group upon which are found evidences of recent volcanic action. It is

Otter Island.

about three-fourths of a mile long and half as broad. Its north shore is low, with a broken, rocky beach; elsewhere its coast is marked by steep cliffs, which attain a maximum height of three hundred feet.

Walrus Island.

Walrus Island lies seven miles east of St. Paul. It is a narrow ledge of lava about half a mile long, and so low that in stormy weather it is washed over by the waves.

Absence of harbors.

There are no harbors at any of these islands, though both at St. Paul and St. George there is anchorage for small vessels in moderately calm weather. During the prevalence, however, of winds from certain directions it is impossible to load or unload vessels of any kind in safety. Rocks or reefs are found in the neighborhood of both these islands.

Climate.

There are, really, but two seasons upon the Pribilof Islands. Summer may be said to begin in the latter part of April, and winter in November, the change from the one to the other being very rapid. Throughout the summer the climate is humid and disagreeable. Dense fogs prevail and hang in heavy banks over the islands, the atmosphere is rarely clear, and the sun is seldom seen. So dense is the fog that navigation in their vicinity is rendered extremely hazardous, and it is often impossible for navigators to

Climate.

find them. Indeed, it is probable that their discovery was retarded on account of the prevalence of fog.[1] The summer temperature ranges between 40° and 45° F., and is highest in August. By the end of October cold winds sweep across the islands, carrying away the moisture. These winds continue throughout a large part of the winter, rendering the climate during that time most disagreeable. The winter temperature averages between 22° and 26° F. The surrounding sea generally freezes over in winter, and the ice remains until the latter part of April, when it rapidly disappears. The shallowness of the eastern portion of Bering Sea prevents any icebergs from reaching the Pribilof Islands. Further details respecting their climate condition will be given later in the Case, when the habits of the fur-seals are discussed.

Animal life.

The principal mammals inhabiting the islands are fur-seals, sea-lions, and hair seals. Formerly sea-otters and walruses were found there in abundance, but owing to indiscriminate hunting they have been exterminated. Blue foxes are common on both islands and lemmings on St.

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[1] These conditions are not confined to the Pribilof Islands, but prevail throughout a great part of Bering Sea. They are matter of common knowledge. See Beechy's Narrative of a Voyage to the Pacific Ocean and Bering Straits, London, 1831, Vol. I, p. 241; North Pac. Dir., p. 534; Wappäus, p. 298.

George. Myriads of birds breed upon the high, rocky cliffs of the islands.

Inhabitants.

The group was uninhabited when first discovered, but was soon colonized by the introduction of natives from Unalaska and other islands of the Aleutian Chain. In 1890 the population of St. Paul was two hundred and forty-four souls, of which twenty-two were white; on St. George there were ninety-three souls, of which eight were white; making the total population of the group three hundred and thirty-seven. Seal meat is the staple food of the natives to-day.

Vegetation.

The vegetation resembles that of the Aleutian Islands, in that no trees are found. It consists of numerous species of grasses of an intensely green color, and of many kinds of wild flowers, which grow in abundance.

## DISCOVERY AND OCCUPATION OF THE SHORES AND ISLANDS OF BERING SEA.

Bering's first expedition.

The exploration of Bering Sea and of the coasts and islands of America which surround it followed upon, and was the direct result of, the occupation[1] of Eastern Siberia and the peninsula of

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[1] Voyage to the Pacific Ocean under the direction of Capt. Cook and others, London, 1784, Vol. III, p. 359–383; Coxe's Russian Discoveries between America Asia and London, 1804, p. 317 *et seq.*; Müller, Voyages from Asia to America, translated by Jeffries, London, 1764, 2d ed., pp. 1–44.

Bering's first expedition.

Kamchatka by the Russians in the seventeenth century. As early as 1648 a Russian ship is reported to have sailed from the Arctic Ocean through Bering Strait to Kamchatka[1]; but not until the reign of Peter the Great was any organized effort made to explore the unknown regions of this sea. The execution of his plans, owing to his death, devolved upon his successor, Empress Catherine. The first expedition, under Vitus Bering, sailed from Kamchatka in 1728 in a northeasterly direction. After discovering St. Lawrence Island it passed through the strait which has since been known by the name of the great navigator.[2] Another part of this expedition reached the continent of America in about latitude 65°, in the vicinity of the mouth of the Yukon River.[3]

Bering's second expedition.

In 1741 Bering started out on his second expedition. It consisted of two parts, both of which discovered the continent of America. Upon his homeward voyage Bering landed at the Shumagin Islands, sighted a large number of the Aleutian Islands, and was finally shipwrecked on the Commander Islands. He died upon the one which was subsequently named for him.[1]

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[1] See map in Müller's Voyages; Cook, Vol. III, p. 361; Burney's History of North-eastern Voyages of Discovery and of the Early Eastern Navigations of the Russians, London, 1819, p. 60 *et seq*:

[2] Müller, p. 48. The name was conferred by Cook in 1778; Greenhow's Memoir on the Northwest coast of America, Senate Doc. No. 174, Twenty-sixth Congress, first session, p. 82.

[3] Müller, p. 55, and map (frontispiece); Burney, p. 130.

Resources of Commander Islands made known.

This last expedition made known the valuable fur resources of the Commander Islands, and brought back to Siberia large quantities of the skins of sea-otters, fur-seals, and foxes. This led to the organization of many private expeditions, and one adventurer, Bossof, is reported to have gathered on these islands furs to the value of at least one-half million dollars between the years 1743 and 1749.[2] The voyages at this period were numerous and indicate great activity throughout the Aleutian Chain, island after island being discovered by private Russian adventurers.[3] Discovery and subjugation to Russian rule went hand in hand with trade, the rich merchants of Moscow furnishing in great measure the money which sustained the cost of discovery; and Cook, writing in 1784, says that the Russians had conquered the Aleutian Islands and made them tributary.[4] Several navigators under Russian Imperial authority made further expeditions into Bering Sea and visited various parts of the coasts, but it was not until the year 1786

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[1] Müller, pp. 93-97, and map (frontispiece); Cook, Vol. III, p. 372; Burney, p. 176.

[2] Berg, Chronological History of the Discovery of the Aleutian Islands, or the Achievements of Russian Merchants, and also an Historical Review of the Fur Trade, St. Petersburg, 1823, p. 1 *et seq.*

[3] Burney, pp. 183, 185; Coxe, pp. 86-110.

[4] Cook, Vol. III, p. 372.

Discovery of Pribilof Islands; due to search for furs.

that the most important of all the discoveries in this sea, that of the Pribilof Islands, was made. It was brought about by the same cause which led to all the other enterprises in these regions, the search for furs. The Russians had already become acquainted with the fur-seals upon the Commander Islands. They had also noticed what is to day known as the Pribilof herd, as it passed semiannually through the channels of the Aleutian Islands; and as the supply of sea-otters diminished, they began exerting themselves to ascertain upon what shores these fur-seals landed. Much time was spent in following them both upon their northward and southward courses. In 1786 the final search for them was undertaken by Gerassim Pribilof, who for five years had been employed by one of the leading trading companies and was regarded as one of the best navigators of that region. For three weeks he cruised in the neighborhood of the Pribilof group in a dense fog without finding it. "At last," says Veniaminof, "fate, as if relenting, yielded to the untiring efforts of an enterprising man and lifted the curtain of fog, revealing the eastern part of the island nearest the Aleutian Archipelago . . . . ."[1] This island was named St. George. In the following year the island of St. Paul was discovered.

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[1] Veniaminof's Notes on the Islands of the Unalaska District, St. Petersburg, 1840, part 1, p. 271.

Cook's expedition to Bering Sea.

Meanwhile in the year 1778, the English navigator, Captain Cook, had appeared in Alaskan waters, in coöperation with an expedition sent by the British Admiralty to Baffin Bay in the hope that a northern passage might be discovered from the Pacific to the Atlantic.[1] After visiting certain points on the Pacific coast of Alaska, he passed into Bering Sea and sailed along the eastern shore as far as Bering Strait, giving names to various places, among which are those of Bristol Bay and Norton Sound. At several points on the coast which he visited he found clear evidence of Russian influence and customs, and he confirmed in the strongest manner the early Russian discoveries. His visit was never followed up by settlement, and it resulted in no acquisition of territory or claim thereto by his Government.[2]

Subsequent Russian expeditions.

In 1791 an expedition, planned by Catherine II, passed from the Aleutian Islands to the northern parts of Bering Sea, including St. Lawrence

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[1] Burney, pp. 219, 220.

[2] On the contrary, it inured largely to the benefit of the Russians, of whom Cook, in his third volume, at p. 373, predicts that "they will undoubtedly make a proper use of the advantages we have opened to them by the discovery of Cook's River (Inlet)." See, also, Coxe, p. 206.

Subsequent Russian expeditions.

Island and Cape Rodney, and returned along the Asiatic coast. Other expeditions followed at various times, an important one being that of Korasakovsky, who, in 1818, made a thorough exploration of a great part of the eastern shore of the sea and established a fort at the mouth of the Nushagak.[1]

Shores and islands became Russian territory as early as 1800.

The great wealth to be derived from the fur-bearing animals led to permanent settlements, the subjugation of the native tribes, and the establishment of forts or trading posts by the Russians on various of the Aleutian Islands, on the Pribilof Islands, and on the eastern mainland of Bering Sea during the latter part of the eighteenth and early years of the nineteenth centuries. Thus, by first discovery, occupation, and permanent colonisation, the shores and islands of Bering Sea, the Aleutian Chain, and the peninsula of Alaska became, probably as early as 1800, an undisputed part of the territory of the Russian Empire.[2]

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[1] The whole of this shore, together with other territory, had already been claimed by Russia in the ukase of 1799, reference to which will be hereafter more fully made. See, generally, upon the whole of the foregoing subject Vivien de Saint-Martin, Vol. I, "Alaska," pp. 55, 56.

[2] See "Russia's Early Title to parts of the Coast of America," Vol. I, p. 12.

## CLAIMS TO THE NORTHWEST COAST OF AMERICA.

Early competition for possession of coast of America.

While the title of Russia to the territory north and west of, and including, the peninsula of Alaska was universally recognised, her claim to the Northwest Coast of the American continent, by which term it is intended to designate the coast between Prince William Sound and the mouth of the Columbia River, was earnestly disputed by more than one powerful nation. During the latter part of the last century and the early years of the present, Great Britain, Spain, and the United States were competing with Russia by way of exploration, trade, and colonization for the possession of the Northwest Coast of America.

Russian competition. Settlement at Kadiak Island.

As early as 1741 Tcherikof, a Russian Captain under Bering's command, visited the coast in about latitude 55° N.;[1] but the earliest permanent settlement east of the Aleutian Chain was made at Kadiak Island in 1784 by Shelikof,[2] an enterprising merchant, who afterwards laid the foundation for the Russsan American Company. A trading post, dwelling houses, and fortifications were erected and a school established. Later, cruises were undertaken from Kadiak to the ad-

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[1] Müller's Voyages, map (frontispiece).

[2] Coxe, p. 207 *et seq.*

Russian competition. Settlement at Kadiak Island.

joining islands and the mainland around Cook's Inlet, Prince William Sound, and Yakutat Bay.[1] The influence of the Kadiak colony in the adjoining continent is told by Coxe in these words: "The settlement formed by Shelikof in the isle of Kadiak has more contributed to spread the extent of the Russian trade and power in the North Pacific Ocean than any of the preceding expeditions. He sent out detached parties, who formed establishments on various parts of the American continent and kept the natives in due order and subjection."[2] In one of these cruises, made under Shelikof's direction, the continent was reached near Prince William Sound, and the coast was followed and carefully explored to the east and south beyond latitude 50°. Coxe says, speaking of the traders who conducted this cruise: "By comparing their accounts with the narratives of Cook, Portlock, Meares, and Vancouver, we have been able to ascertain most of the harbours and places at which they touched, and the general agreement with the accounts given by the English navigators proves the accuracy of their description."[1] At Yakutat, in June, 1788, they took formal possession of the country and received

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[1] Coxe, p. 232.

[2] Coxe, p. 264. See also *ibid.*, pp. 268, 269, 273.

Russian competition. Settlement at Kadiak Island.

from the native chief tokens of his acceptance of Russian dominion.[1] As further evidence of Russian occupation of the mainland of the Northwest Coast the launching of a vessel in 1794 from the shores of Prince William Sound is chronicled, this being the first ship built in Alaska.[2]

Founding of Sitka.

But the most important step taken by Russia to permanently establish her authority over the islands and adjoining shores of the Northwest Coast of the continent was the founding in the beginning of the present century of New Archangel (afterwards Sitka),[3] which soon became a fortress, the principal trading post, and the seat of government of the Russian American possessions. From Kadiak, first, and from Sitka, later, the Russian merchants continued to push their traffic with the natives along down the mainland towards the Columbia River, and in 1812 they had even established a colony on the coast of California,[4] called Fort Ross, a few miles north of the Bay of San Francisco. As early as 1810 Russia had gone so far as to inform the United

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[1] See, generally, Coxe, pp. 240–254.

[2] Tikhmenief's Historical Review of the Development of the Russian American Company and of its Operations up to the present Time, St. Petersburg, 1861, Vol. I, p. 40.

[3] Vivien de Saint-Martin, Vol. I, p. 56. The year 1802 is generally taken as the date of the founding of Sitka.

[4] Greenhow's Memoir, pp. 9, 148; Vivien de Saint-Martin, Vol. I, p. 56.

States that she claimed the coast to the Columbia River.[1]

British competition.

On the other hand, Great Britain early laid claim to portions of this same Northwest Coast. Drake is believed by some to have touched it in his discoveries in 1579.[2] The famous British navigator, Captain Cook, appeared there in 1778, visited Prince William Sound and Cook's Inlet, and (as already noticed) passing into Bering Sea. Cook's voyages were followed by those of Portlock, Dixon, Meares, and Vancouver. English traders, and especially the powerful Northwest Company (which in 1821 became united with the Hudson's Bay Company), were rapidly extending their enterprise to the coast between the Columbia River and latitude 56° N. and thus coming into competition and conflict with the merchants and traders of other countries, including those of Russia.[3]

Spanish competition.

So, also, Spain following up the occupation of California, soon after the middle of the eighteenth century began laying her plans for a complete occupation of the whole of the western coast of America, washed by the waters of the Pacific

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[1] American State Papers, Foreign Relations, Vol. V, p. 442. See, also, generally, "Russia's Early Title to the Coast of America," Vol. I, p. 12.

[2] Burney's History of Dicoveries in the South Sea, London, 1803, Vol. I, p. 356. See, also, Greenhow's Memoir, p. 37.

[3] London Quarterly Review, Vol. XXVI, pp. 344–347.

Spanish competition.

Ocean, and in doing this she was actuated largely by knowledge of the fact that the Russians had a similar object in view.[1] Prior to 1768 the Spanish navigators had explored it up to latitude 43°, and in 1774, 1775, and 1779 they visited various portions of the same as far north as Prince William Sound, taking possession of much of the country on behalf of their sovereign; and an examination of the map of that region of the present day attests, in the geographical names, the early presence of the Spanish discoverers.[2] As late as 1790 Spain asserted her right to the Northwest Coast to latitude 60° N.[3]

The Nootka Sound controversy.

Some of the Spanish claims were brought to an issue in 1789 in the Nootka Sound controversy, which was the first dispute between European nations in regard to any territory lying between San Francisco and Prince William Sound. Nootka Sound is situated on the west side of Vancouver Island in about latitude 50° N.[4] In 1789, on being informed that Russia was intending to occupy it, the Spanish Government sent out two men-of-war with orders to anticipate her and drive away all foreigners. No trouble of

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[1] Greenhow's Memoir, pp. 52, 96.

[2] Vivien de Saint-Martin, Vol. I, p. 56; Greenhow's Memoir, p. 57 and chap. IV.

[3] American State Papers, Foreign Relations, Vol. V, p. 444.

[4] It appears to have been discovered, and was named, by Cook in 1788. Greenhow's Memoir, p. 82.

The Nootka Sound controversy.

any kind with Russia arose out of these measures,[1] but the Spanish naval commander having seized two vessels engaged in trade there, together with certain houses and land, all of which the British Government claimed to be the property of British subjects, the act of seizure was vigorously and successfully resented, and as a result of a heated controversy the treaty of 1790 was celebrated between Great Britain and Spain.[2] Article III of that treaty is, in part, as follows: "It is agreed that the respective subjects shall not be disturbed or molested either in navigating or carrying on their fisheries in the Pacific Ocean, or in the South Seas, or in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country or of making settlements there; the whole subject, nevertheless, to the restrictions specified in the three following articles."

Treaty of 1790 between Great Britain and Spain.

This stipulation is of special significance, as it constituted a basis of the adjustment made by Russia with the United States in 1824 and with Great Britain in 1825, respecting the navigation of the Pacific Ocean and the conflicting claims to the territory on the Northwest Coast.

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[1] American State Papers, Foreign Relations, Vol. V, p. 445.

[2] Vol. I, p. 32. See Greenhow's Memoir, chap. VI.

American competition.

The partial navigation of the Columbia River, by the American Navigator, Captain Gray, in 1792, the expedition of Lewis and Clarke across the Rocky Mountains in the years 1803 to 1805,[1] and the establishment of the Pacific Fur Company on the Pacific coast in the early years of the present century, gave to the United States a permanent lodgment on the Northwest Coast and constituted the basis of an active competition on the part of that nation for the sovereignty and trade of a considerable part of the shores and waters of the Pacific.[2] The troubles which early in this century arose between the United States and Great Britain as to ownership of these coasts were left undetermined by the treaty of Ghent, following the war of 1812; and in 1818, being still unable to adjust the respective claims, the two powers agreed that all territory in dispute claimed by either of them between the Rocky Mountains and the Pacific Ocean should, with its harbors, bays, and rivers be open and free for ten years to the vessels and citizens of both nations,[3] and not until 1846 were their respective territorial rights on the Northwest Coast permanently settled by treaty.

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[1] Greenhow's Memoir, p. 126 *et seq.*, p. 149.

[2] Greenhow's Memoir, pp. 152–158.

[3] Treaty of 1818 between the United States and Great Britain, Vol. I, p. 34.

This competition certain to result in international conflict.

The claims of Spain to this region were transferred to the United States by the treaty of 1819.[1]

It thus appears from the foregoing historical review that, while the claim of Russia to the territory embracing the Aleutian Islands, the peninsula of Alaska, and the coasts and islands of Bering Sea was undisputed, the shores and the adjacent islands of the American continent south of latitude 60° as far as California were during the latter part of the eighteenth and the first quarter of the present century the subject of conflicting claims on the part of Russia, Great Britain, Spain, and the United States. This condition of affairs indicated that an international conflict was likely to come sooner or later, and it was foreshadowed in an article printed in the London Quarterly Review of 1814, in which it was said: "How long the continent of America will afford a supply of furs and peltry to the contending traders of England, Russia, and the United States, we pretend not to determine, but we believe they have each of them lately experienced some difficulty in supplying the usual demand for those of the most valuable description. An increasing scarcity can not fail to produce a collision of interests and disputes, which at one time or other will probably terminate in a war."[2]

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[1] Vol. I, p. 34.

[2] London Quarterly Review, Vol. XI, p. 292.

## THE RUSSIAN AMERICAN COMPANY.

Its political and commercial importance.

Having thus presented a brief sketch of the political condition of affairs in the early part of this century in the territory surrounding Bering Sea and on the Northwest Coast of America, it is proper, before entering upon a consideration of the events of international importance which follow, to refer to the organization and early history of the Russian American Company, an association which for a period of over sixty years carried on trade and administered public affairs throughout a great part of these regions. In the extent and variety of its operations it occupies a position similar to that held by the East India and the Hudson's Bay Companies; and its history is also the history of that portion of the globe to which the attention of the Tribunal of Arbitration is directed.

The outgrowth of trading associations.

The Russian American Company was the outgrowth of the numerous trading associations,[1] which, soon after the discoveries of 1741, began to develop the lucrative fur trade in the Aleutian Islands and Bering Sea. The rivalry and competition which grew up between them proved in many ways disastrous[2] and resulted eventually in placing the fur trade of the Colonies under the control of a single powerful organization.[1] This was accomplished in 1799, in which year a ukase was issued, creating the "Russian American Company" and containing its first charter.[2]

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[1] For a detailed account of same, see Berg, p. 1 *et seq.*

[2] Tikhmenief, Vol. I, p. 61.

Chartered in 1799.

Its rights and privileges under first charter.

This ukase invested it with special and exclusive privileges for a period of twenty years on the shores of northwestern America between latitude 55° N. and Bering Strait, on the Aleutian Islands, the Kurile Islands, and the islands of the Northeastern or Bering Sea. To it was reserved the exclusive right to all products of the chase and of commerce in those regions; and it was specially authorized to take possession on behalf of the Imperial Government of newly discovered countries, both to the north and to the south of latitude 55° on the coast of America. It was authorized to establish agencies within and without the empire, and to use a seal and a flag bearing the Imperial coat of arms. Its chief place of business, which was originally at Irkutsk, was soon transferred to St. Petersburg, where its shareholders, none of whom were allowed to be foreigners, embraced members of the Imperial family and the high nobility.

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[1] Vivien de Saint-Martin, Vol. I, p. 56.

[2] Vol. I, p. 14.

While the privileges conferred by this charter were very great, the Company was, on the other hand, burdened with some heavy obligations. It was compelled at its own expense to carry on the government of the region over which its privileges extended, to maintain courts, the church, and a small military force, and, at a later period, to hold ready at various points on the coast provisions and stores for the use, in cases of emergency, of the naval vessels or troops of the Russian Government.

Its obligations.

Its mode of government.

For the purposes of administration the Imperial Government and the directors of the Company jointly appointed a chief manager, who resided at Sitka, and who at an early date was required to be an officer of the navy of high rank. His powers were absolute within the territory over which the Company exercised jurisdiction. Under him were sub-managers, overseers, and other agents. Reports of the Company's transactions were submitted originally to the Minister of the Interior, and later to the Minister of Finance.

Officers of Imperial navy engaged in its service.

Dating from the year 1802 officers of the Imperial navy were constantly in the employ of the Company. As long as it maintained a military and naval force in the Colonies at its own expense, such forces were entirely at the disposal of the chief manager, who had the privilege of selecting the soldiers and sailors from any force stationed within the boundaries of Siberia. Even the officers of those naval vessels which were not maintained at the expense of the Company, and which were sent out to the Colonies by the Imperial Government, were generally enjoined to obey the orders of the chief manager, and it will be made to appear from papers which will be hereafter cited that such orders were freely given.

**Officers of Imperial navy engaged in its service.**

Under its charter the Company paid no royalty or rent to the Government, but as its trade consisted chiefly in the exchange of furs for teas on the Chinese frontier, the Government received large sums through the duty collected on such teas.

**Paid no royalty.**

In short, the Company administered both government and trade throughout the whole of the territory over which it was given control.[1]

**Summary.**

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[1] See in reference to all that has been said regarding the rights, obligations, and government of the Russian American Company: Regulations of the United American Company, Tikhmenief, Vol. I, app., pp. 1–19; Charter of 1799, Vol. I, p. 14; ukase and charter of 1821, Vol. I, pp. 16 and 24; "Additional facts relating to the Russian American Company," Vol. I, p. 9; Tikhmenief, Vol. II, app., pp. 17–63.

## THE UKASE OF 1821.

Ukase of 1821 and second charter of the Company.

On the 4th of September, 1821, this famous ukase was made public, and nine days later, on the 13th of September, 1821, the Emperor renewed with certain additions for another term of twenty years the charter and privileges granted in 1799 to the Russian American Company. Both the ukase and the new charter appear in full in the Appendix.[1]

Purpose of the Ukase.

The objects which were sought to be obtained by the promulgation of the ukase appear from the recital prefixed to it, which is as follows: "Observing from Reports submitted to US that the trade of OUR subjects on the Aleutian Islands and on the North West Coast of America appertaining unto Russia is subjected, because of secret and illicit Traffic, to oppression and impediments; and finding that the principal cause of these difficulties is the want of Rules establishing the Boundaries for Navigation along these Coasts, and the order of Naval Communication as well in these places as on the whole of the Eastern Coast of Siberia and the Kurile Islands, WE have deemed it necessary to determine these Communications by specific Regulations which are hereto attached."

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[1] Vol. I, pp. 16, 24.

Its title and first two sections are as follows:

Its title and first two sections.

"Rules established for the Limits of Navigation and order of Communication along the Coast of Eastern Siberia, the Northwest Coast of America, and the Aleutian, Kurile, and other Islands.

"§ 1. The pursuits of Commerce, whaling, and fishery, and of all other Industry on all Islands, Ports, and Gulfs, including the whole of the Northwest Coast of America, beginning from Bering's Straits to the 51° of Northern Latitude, also from the Aleutian Islands to the Eastern Coast of Siberia, as well as along the Kurile Islands, from Bering's Straits to the South Cape of the Island of Urup, viz., to the 45° 50′ Northern Latitude, is exclusively granted to Russian subjects.

"§ 2. It is, therefore, prohibited to all Foreign Vessels, not only to land on the Coasts and Islands belonging to Russia as stated above: but also to approach them within less than a Hundred Italian Miles.[1] The Transgressor's Vessel is subject to confiscation along with the whole Cargo."

Reason why limit of 100 miles chosen.

The reason why the limit of one hundred miles was chosen appears from a letter written by Mr.

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[1] An Italian mile is the equivalent of a geographical mile, of which there are sixty to a degree.

Reason why limit of 100 miles chosen.

Middleton, United States Minister at St. Petersburg, to the Secretary of State, dated August 8, 1822, giving an account of an interview with the Governor-General of Siberia, who had been one of the committee originating this measure. The Governor-General said it was sought to establish "limits to the marine jurisdiction on their coasts, such as should secure to the Russian American Fur Company the monopoly of the very lucrative profit they carry on. In order to do this they sought a precedent, and found the distance of thirty leagues, named in the Treaty of Utrecht, and which may be calculated at about one hundred Italian miles, sufficient for all purposes."[1] As a similar and more recent precedent, though not for so great an extent of sea jurisdiction, might have been cited the fourth article of the Nootka Sound convention between Great Britain and Spain, already referred to, whereby the former conceded to the latter exclusive jurisdiction of the sea for ten leagues from any part of the coasts already occupied by Spain.[2]

This limit enabled Russia to protect seal herd of Pribilof Islands.

The Pribilof Islands, the home of the Alaskan seal herd, are situated less than two hundred Italian miles from the Aleutian Chain on the south, and thus a sufficient portion of the eastern half of Bering Sea was covered by the ukase to enable Russia to protect the herd while there.

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[1] Mr. Middleton to Mr. Adams, August 8, 1822, Vol. I, p. 135.

[2] Vol. I, p. 32.

Ukase declaratory of existing rights.

In so far as it affected that sea and its shores, Russia regarded the ukase as merely declaratory of existing rights. The board of administration of the Russian American Company, writing from St. Petersburg to the chief manager of the Russian American Colonies at Sitka on September 20, 1821, says: "With this precious act in your hand you will be enabled to assume a new position and to stand firmly opposed to all attempts on the part of foreigners to infringe upon our rights and privileges. In accordance with the will of His Imperial Majesty we will not be left to protect unaided the land and waters embraced in our exclusive privileges. A squadron of naval vessels is under orders to prepare for a cruise to the coasts of northeastern Asia and northwestern America. . . . We can now stand upon our rights, and drive from our waters and ports the intruders who threaten to neutralize the benefits and gifts most graciously bestowed upon our Company by His Imperial Majesty."[1]

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[1] Vol. I, p. 59. This and other documents hereinafter cited, relating to the affairs of the Russian American Company, belong to the official records or archives of the territory which was ceded to the United States by Russia by the Treaty of 1867. They came into the possession of the United States by virtue of the second article of that treaty, and are now in the Archives of the Department of State at Washington. Fac-similes of all the original documents referred to herein will be found at the end of Vol. I.

In a letter dated February 28, 1822, from the board to the chief manager of the Colonies, we find the following statement: "As to fur-seals, however, since our Gracious Sovereign has been pleased to strengthen our claims of jurisdiction and exclusive rights in these waters with his strong hand, we can well afford to reduce the number of seals killed annually, and to patiently await the natural increase resulting therefrom, which will yield us an abundant harvest in the future."[1]

**Under Ukase of 1799 foreign vessels not permitted to hunt or trade in Bering Sea.**

The official Russian records show that after the ukase or charter of 1799, granting to the Russian American Company certain exclusive control of trade and colonization, its authorities, acting under the sanction of the Russian Government, did not permit foreign vessels to visit Bering Sea. The trading and hunting rights of the Company were jealously guarded there prior and up to 1821, as will appear from the documents about to be cited; and whatever creation or extension of exclusive Russian jurisdiction was intended to be effected by the promulgation of the ukase of that year applied to the Pacific Ocean proper, and to the coasts and islands east and south of the peninsula of Alaska. The only effect which could have been intended by that

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[1] Vol. I, p. 61.

Under Ukase of 1799 foreign vessels not permitted to hunt or trade in Bering Sea.

edict upon the coast and waters of Bering Sea and the Aleutian Islands was to strengthen and confirm the jurisdiction theretofore exercised by Russia, and this is made clearly to appear from the official documents of that period.

Request of Minister of Finance in 1820 and 1821 that cruisers be dispatched to protect Company's interests in Bering Sea.

On April 9, 1820, the Russian Imperial Minister of Finance, upon a report of a committee of ministers appointed by the Emperor to obtain information respecting the Russian American Colonies, from which report it appeared that illicit visits of foreign vessels to Alaskan waters were being made, addressed an official communication to the Imperial Minister of Marine, in which, after referring to this report, he states that "it appears of the most imperative necessity for the preservation of our sovereignty in the northwestern part of America and on the islands and waters situated between them, to maintain there continuously two ships of the Imperial fleet." He suggests that these two vessels should be dispatched during that year, one to cruise from Sitka westward and northward, and after "having thoroughly examined the shores of the Aleutian Islands, the coast of Kamchatka, the Kurile Islands, and the intervening waters," to winter in Petropavlovsk on the Asiatic coast. "The other ship, however, (sailing from Petropavlovsk), having examined the eastern coast of the Kamchatka

Request of Minister of Finance in 1820 and 1821 that cruisers be dispatched to protect Company's interests in Bering Sea.

pensinsula up to 62° of northern latitude, and the west coast of America, from this latitude to the island of Unalaska, ~~and the~~ intervening waters (Bering Sea), should proceed to Kadiak and from there to Sitka for the winter. The object of the cruising of two of our armed vessels in the localities above mentioned is the protection of our Colonies and the exclusion of foreign vessels engaged in traffic or industry injurious to the interests of the Russian Company as well as to those of the native inhabitants of those regions."

In the following year, 1821, two similar ships were to be dispatched, and in "this manner two ships of war would always be present in the Colonies and the Company would be assured of their protection."[1]

Killing of fur-seals at sea to be prevented.

The board of administration of the Russian American Company, writing March 15, 1821, from St. Petersburg to the chief manager of the Colonies at Sitka, with full knowledge of the report of the committee of ministers and the action of the Ministers of Finance and of Marine of the year previous, clearly intimates the duty these war ships were to perform. In giving instructions as to the management of the fur-seals on the Pribilof Islands, its says: "We must

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[1] Vol. I, p. 49.

Killing of fur-seals at sea to be prevented.

suppose that a total suspension of killing every fifth year will effectually stop the diminution of the fur-seals, and that it will be safe at the expiration of the close season to resume killing at the rate mentioned above (fifty thousand annually). By a strict observance of such rules, and a prohibition of all killing of fur-seals at sea or in the passes of the Aleutian Islands, we may hope to make this industry a permanent and reliable source of income to the Company, without disturbing the price of these valuable skins in the market."[1]

The Pigott affair. Certain contracts with foreigners annulled. Control exercised over Bering Sea prior to 1821.

In 1819 Riccord, the then commander of Kamchatka, acting under advice of one Dobello, a foreigner in the employ of the Russian Government, granted to an Englishman named Pigott the right for ten years to hunt whales on the coast of Eastern Siberia.[2] This grant was at once repudiated by the Government. A considerable amount of correspondence resulted, which illustrates the complete control which Russia claimed and actually exercised over Bering Sea prior to 1821, and how jealous she and her chartered Company were of the intrusion of foreigners.

Under date of April 10, 1820, the Minister

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[1] Vol. I, p. 58.
[2] Tikhmenief, Vol. I, pp. 192–200.

The Pigott affair continued.

of Finance wrote to the board of administration of the Russian American Company for its guidance in part as follows: "The commander of the government of Irkutsk is hereby instructed to forbid any foreigners, except such as have become Russian subjects, to enter the mercantile guilds, or to settle in business in Kamchatka or Okhotsk; also to entirely prohibit foreign merchant vessels from trading in these localities and from anchoring in any port of Eastern Siberia, except in the case of disaster. . . . It is hereby ordered that the local authorities shall inform the Englishman Davis at Okhotsk and Dobello's agent in Kamchatka that the Government does not permit them to reside in those places, much less to erect buildings or other immovable property.

In the same dispatch the minister said: "Having for the benefit of the American Company excluded all foreigners from Kamchatka and Okhotsk and prohibited them from engaging in trade and from hunting and fishing in all the waters of Eastern Siberia, the Government fully expects that the Company, on its part, will hold itself responsible for supplying those regions with all necessaries." And again: "In conclusion, it is stated as the decision of his Majesty the Emperor, in view of possible future complications of this nature, that no contracts involving the free admission or navigation for trade of foreign ships or foreign subjects in the waters adjoining or bounded by the coasts of Russian colonies will be approved by the Imperial Government."[1]

Foreigners prohibited from visiting waters frequented by sea-otters and fur-seals.

On April 23, 1820, the board of administration of the Company at St. Petersburg wrote to the chief manager of the Colonies at Sitka, and after reciting the contents of the foregoing letter continued: "As soon as the Imperial Government ascertained that the contracts made (viz., those with Pigott) were in open violation of the privileges granted the Company, it prohibited at once all foreigners not only from settling in Kamchatka and Okhotsk, but also from all intercourse with those regions, enjoining the authorities to maintain the strictest surveillance over their movements. Basing your own action upon this proceeding of our Highest Protector, you, as commander of all our Colonies, must prohibit with equal strictness all foreigners from engaging in any intercourse or trade with native inhabitants, as well as from visiting the waters frequented by sea-otters and fur-seals, over which our operations extend, under penalty of the most severe measures, including the confiscation of

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[1] Vol. I, p. 51.

Foreigners prohibited from visiting waters frequented by sea-otters and fur-seals.

ships and the imprisonment of crews engaged in this illegal traffic. You must act with the greatest severity in cases where foreigners have sold to the natives arms, powder, and lead. They must be made to understand that their presence in our waters is contrary to our laws, and that they will never be admitted to any port unless you or your subordinates convince yourselves that such is necessary for the saving of life. In a word, you must preserve an attitude in full accord with the views of the Imperial Government on this subject, and protect against all intruders the domain of land and water granted to us by the grace of the Emperor and necessary for our continued existence and prosperity. You must transmit these instructions without delay to your subordinate commanders for their conduct in their intercourse with foreigners, and especially to the commanders of ships navigating our waters, to enable them to drive away the foreign intruders."[1]

The Pigott affair, continued.

This question of the contract with foreigners was again referred to in a letter from the board of administration to the chief manager of the Colonies, March 31, 1821. Speaking of Messrs. Riccord, Dobello, and Pigott, it is said: "From

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[1] Vol. I, pp. 53, 54.

The Pigott affair, continued.

the copy herewith inclosed of communications from the ministries, you will see that the Imperial Government not only repudiated Messrs. Riccord, Dobello, and Pigott, but also prohibited them altogether from trading in Okhotsk and Kamchatka, with the result that to-day the foreigners have abandoned their enterprise in that region, and no other foreigners will be allowed to visit these places in the future. The principles involved in this action of the Government you must also observe in dealing with foreigners who may visit our Colonies, using all the force at your command to drive them from our waters. Together with our new privileges, which have already been promulgated by the minister and which are only awaiting the return of our Monarch, we shall also receive definite instructions how to deal with foreigners who venture to cross the limits of possessions acquired long ago through Russian enterprise and valor."[1]

Summary.

Protests directed to claim of jurisdiction over Pacific Ocean and to claim to coast of continent.

It thus appears from the foregoing citations that, so far as it concerns the coasts and waters of Bering Sea, the ukase of 1821 was merely declaratory of preëxisting claims of exclusive jurisdiction as to trade, which had been enforced therein for many years. The ukase of 1799, which set forth a claim of exclusive Russian juris-

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[1] Vol. I, p. 55.

Protests directed to claim of jurisdiction over Pacific Ocean and to claim to coast of continent.

diction as far south as latitude 55°, called forth no protest from any foreign powers, nor was objection offered to the exclusion of foreign ships from trade with the natives and hunting fur-bearing animals in the waters of Bering Sea and on the Aleutian Islands as a result of that ukase and of the grant of exclusive privileges to the Russian American Company. It was only when the ukase of 1821 sought to extend the Russian claim to the American continent south to latitude 51°, and to place the coasts and waters of the ocean in that region under the exclusive control of the Russian American Company, that vigorous protests were made by the Governments of the United States and Great Britain. And the correspondence which grew out of those protests[1] shows that they were inspired by the claim of jurisdiction over large portions of the Pacific Ocean (as distinguished from Bering Sea) and by the conflicting claims of the three nations to the coast over which Russia sought to extend exclusive authority. The United States and Great Britain had for years before the publication of that ukase been competitors for the trade and the ownership of the coasts and islands lying between latitudes 51° and 55°, on what was known as the Northwest Coast, and their citizens and subjects had been actively engaged with their ships in hunting and trading on those shores and waters, and it was natural that they should vigorously protest against the attempt of Russia to exclude them from that region. On the other hand there is no record that such hunting or trading had ever been carried on by them within Bering Sea. The history of the period and the locality, the discussion which followed the ukase, and the treaties which were the result of it, attest that the object of both the United States and Great Britain in contesting the pretensions of Russia in this matter was to maintain their respective claims to the territory indicated, to preserve intact their valuable trade with the natives on the Northwest Coast, and to enjoy the free navigation of the Great Ocean which washed that coast.[1]

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[1] Vol. I, p. 132–152. Only such portion of the correspondence between Great Britain and Russia is given, as was inclosed in Lord Salisbury's note to Sir Julian Pauncefote, dated August 2, 1890, Vol. I, p. 242.

Protests directed to claim of jurisdiction over Pacific Ocean and to claim to coast of continent.

## THE TREATIES OF 1824 AND 1825.

The controversy which followed the promulgation of the ukase of 1821 resulted in a treaty between the United States and Russia in 1824,[2]

Settled the twofold dispute.

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[1] See Vivien de Saint-Martin, Vol. I, p. 56.

[2] Vol. I, p. 35.

Settled the twofold dispute.

and one between Great Britain and Russia in 1825.[1] These two treaties settled the twofold dispute which had been raised by the ukase, namely, first, the maritime dispute: second, the territorial dispute relating to the Northwest Coast.

Bering Sea not included in terms used to denote Pacific Ocean.

The maritime dispute was settled by the first articles. That of the British treaty was, at the request of the British negotiators,[2] copied almost verbatim from the corresponding article of the American treaty, and the latter was based upon the third article of the convention of 1790 between Great Britain and Spain.[3]

That the term "Great Ocean, commonly called the Pacific Ocean or South Sea," used in article I of the treaty of 1824 with the United States, and the term "The Ocean, commonly called the Pacific Ocean," used in article I of the treaty of 1825 with Great Britain, did not apply to and include Bering Sea, is shown by a study of the maps, charts, and writings of navigators[4] at the time of and prior to the negotiation and celebration of these treaties. A list of these maps and charts is appended hereto,[1] and a careful examination of the same is invited. It will be seen from them that the best geographers have at all times distinguished this body of water from the ocean lying south of it by conferring upon it some separate name, in most cases either that of Sea of Kamchatka, Bering Sea, Northeastern Sea, or Eastern Ocean.[2]

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[1] Vol. I, p. 39.

[2] Letter G. Canning to S. Canning, Dec. 8, 1824, Vol. I, p. 260.

[3] Vol. I, p. 32.

[4] Burney, speaking of the "line of boundary which seems designed by nature for this great sea," says: "The northern limits are marked by the continuation of the American Coast from Mount St. Elias towards the west with the chain of Islands called the Fox and the Aleutian Islands." Burney's Chronological History of the Discoveries in the South Sea or Pacific Ocean, London, 1803, Vol. I, p. 2.

Express declarations of Russian Government on this subject.

But in addition to the correspondence attending the negotiations, the text of the treaties themselves, and the authority of navigators, attention is invited to the express declarations of the Russian Government on the subject during the negotiations and after the treaties had been celebrated.

On July 18, 1822, the Imperial Minister of Finance addressed to the board of administration of the Russian American Company a communication in which, referring to the protests which had been made against the ukase of 1821 and to the negotiations on the subject with the United States having in view some modification of the ukase, he says: "The rules to be proposed will probably imply that it is no longer necessary to prohibit the navigation of foreign vessels for the distance mentioned in the edict of September 4, 1821, and that we will not claim jurisdiction over coastwise waters beyond the limits accepted by any other maritime power for the whole of our coast facing the open ocean. Over all interior waters, however, and over all waters inclosed by Russian territory, such as the Sea of Okhotsk, Bering Sea, or the Sea of Kamchatka, as well as in all gulfs, bays, and estuaries within our possessions, the right to the strictest control will always be maintained."[1]

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[1] Vol. I, p. 287.

[2] As to "Sea of Kamchatka" and "Bering Sea," see quotation *infra* from the letter dated July 18, 1822, from the Minister of Finance to the board of administration. As to "Northeastern Sea," see first and third charters of the Company, Vol. I, pp. 14, 28. As to "Eastern Ocean," see Coxe, map (frontispiece).

Declaration made immediately before treaty with Great Britain.

Soon after the conclusion of the treaty of 1824 with the United States the directors of the Russian American Company applied to the Imperial Government for a correct interpretation of the same. A special committee, consisting of some of the highest dignitaries of the Empire, was appointed, and July 21, 1824, it issued a report of its proceedings signed by Count Nesselrode and others.[2] The seventh paragraph of this report reads as follows: "That since the sovereignty of Russia over the shores of Siberia and America as well as over the Aleutian Islands and

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[1] Vol. I, p. 62.

[2] Russian Minister of Finance to the board of the Russian American Company, Sept. 4, 1824, and accompanying report, Vol. I, pp. 67–71.

Declaration made immediately before treaty with Great Britain.

the intervening sea has long since been acknowledged by all powers, these coasts, islands, and seas just named could not have been referred to in the articles of the above-mentioned convention, which latter concerns only the disputed territory on the Northwest Coast of America and the adjoining islands, and that in the full assurance of such undisputed right Russia has long since established permanent settlements on the coast of Siberia as well as on the chain of the Aleutian Islands; consequently American subjects could not, on the strength of article II of the convention of April 5–17, have made landings on the coast, or carried on hunting and fishing without the permission of our commanders and governors. These coasts of Siberia and of the Aleutian Islands are not washed by the Southern or Pacific Ocean, of which mention is made in article I of the convention, but by the Arctic Ocean and the Seas of Kamchatka and Okhotsk, which, on all authentic charts and in all geographies, form no part of the Southern or Pacific Ocean."[1]

To fully appreciate the significance of the foregoing declaration, it must be remembered not only that it was made in response to a request of the Russian American Company for an interpretation of the American treaty, but, what is more important, that it was made shortly before the signing of the treaty with Great Britain, in which, therefore, the Russian negotiators did not consider it necessary (any more than they had considered it necessary in the former) to declare that Bering Sea was not a part of the Pacific Ocean, in which latter the right of free fishing was recognized to exist.

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[1] The explanatory note presented Dec. 6, 1824, by Baron de Tuyll to Mr. Adams, reference to which is made in Mr. Blaine's note to Lord Salisbury of Dec. 17, 1890 (Vol. I, pp. 263, 276), was a result of the report from which the foregoing paragraph is quoted; and this very paragraph was clearly used as the basis for the explanatory note.

Treaties recognized by implication rights claimed by Russia over Bering Sea.

So far, therefore, from the terms of these treaties revoking or limiting the jurisdiction previously exercised by Russia over Bering Sea, there is inherent evidence in all those instruments, as well as in the negotiations which preceded them, that no such revocation or limitation was sought, conceded, or obtained by the high contracting parties. Russia was quick to notice that her assumption of control over the waters of the North Pacific Ocean was untenable; she therefore acknowledged this by the first articles of the two treaties in question. But neither in the protests, negotiations, nor treaties is any reference found to Bering Sea, and it must be conceded from a study of those instruments and the subsequent events that the question of jurisdictional rights over its waters was left where it

Treaties recognized by implication rights claimed by Russia over Bering Sea.

had stood before the treaties, except that the exercise of these rights by Russia had now, through these treaties, received the implied recognition of two great nations; for while, by the ukase of 1821, Russia had publicly claimed certain unusual jurisdiction both over Bering Sea and over a portion of the Pacific Ocean, yet in the resulting treaties, which constituted a complete settlement of all differences growing out of this ukase,[1] no reference is made to this jurisdiction so far as it related to Bering Sea, although it is expressly and conspicuously renounced as to the Pacific Ocean.

Burden upon Great Britain to show that these rights have been lost.

The burden is thus placed upon Great Britain to show that this jurisdiction, recognized in the year 1825 to exist, has been lost. It is not claimed that it was exercised for all purposes. Russia never sought to prevent vessels from passing through Bering Sea in order to reach the Arctic Ocean; nor did she always strictly enforce the prohibition of whaling within the distance of one hundred miles from its shores; but, so far as the fur-seals are concerned, it will be made to appear in what follows that the jurisdiction in question was always exercised for their protection.

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[1] Section 8 of the "Proceedings of the Conference," Vol. I, p. 68.

By treaties Russia relinquished large portion of coast claimed.

With regard to what may be termed the territorial dispute, it appears from an examination on the correspondence and treaties that the southern boundary of the Russian territories was fixed at latitude 54° 40′ N., whereby she relinquished a large portion of the Northwest Coast which she had claimed by the ukase of 1821, and that the coasts, interior waters, etc., upon and in which the United States and Great Britain were allowed to trade for ten years without restrictions, were limited on the west by Yakutat Bay and Mount St. Elias; that is to say, that this right was restricted to the coast line, concerning the ownership of which there may have been some possible dispute.[1] The specific declarations in the British treaty of 1825 as to the line of coast and water to which access and trade were thus granted leave no room for doubt as to what coast was intended; and that the above limitation was understood by Russia is expressly stated by the Minister of Finance in his communication of September 4, 1824, already cited.

It may be mentioned here that at the expiration of this ten year clause, both the United States and England made strenuous but futile efforts to obtain a renewal of its provisions.[1] The United States expressly recognised that after 1834 this clause had ceased to be operative, as is proved not only by their course in the case of the *Loriot*,[2] but more particularly by the fact that in 1845, at the request of the Russian Government, they caused to be published a notice,[3] reminding the owners of American vessels of the prohibition of trade which existed in regard to the coast in question.

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[1] Art. IV of the treaty of 1824 and art. VII of the treaty of 1825. Compare art. III of the treaty of 1818 between the United States and Great Britain, Vol. I, p. 34.

Russia's object in excluding Bering Sea from effect of treaties was protection of fur-industry.

The great object had in view by the Russian Government in excluding Bering Sea from the effect of the treaties of 1824 and 1825, and also in limiting the privilege of access and trade for even ten years to the coast south and east of Yakutat Bay, was obviously the protection of the valuable fur industry, the right to derive profit from which was the exclusive franchise of the Russian American Company. This is apparent in all the correspondence between the Government and the Company following the protests against the ukase and attending the negotiations of the treaties. The Minister of Finance

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[1] The diplomatic correspondence between the United States and Russia relating hereto is contained in the documents accompanying the message of the President of the United States to Congress, December 3, 1838, and in Senate Ex. Doc. No. 106, pp. 223–246.

[2] Note of Mr. Blaine to Sir Julian Pauncefote, June 30, 1890 Vol. I, p. 224.

[3] Vol. I, p. 91.

Russia's object in excluding Bering Sea from effect of treaties was protection of fur industry.

in his communication of July 18, 1822, to the board of administration wrote, in view of a proposed modification of the ukase, as follows: "At the same time I am authorized to assure you that every effort will be made to secure the adoption of such rules as will effectually protect the Russian American Company from inroads on the part of foreigners upon their vested privileges, in strict conformity not only with the privileges granted by highest act, but also with the edict of September 4, 1821."[1]

Under date of April 11, 1824, Count Nesselrode, Chancellor of the Empire, wrote to N. S. Mordvinof, of the board of administration, in part as follows: "It is hardly necessary for me to repeat that in all these negotiations with England we have recognized, and always will recognize, the paramount importance of the interests of the Russian American Company in this matter."[2]

Under date of August 18, 1824, Count Nesselrode, in communicating the report of the committee, already noticed, to the Minister of Finance, wrote: "I flatter myself with the thought that these documents will convince you, most gracious sir, as well as the board of administration of the Russian American Company, that it is His Majesty's firm determination to protect the Company's interests in the catch and preservation of all marine animals, and to secure to it all the advantages to which it is entitled under the charter and privileges."[1]

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[1] Vol. I, p. 63.
[2] Vol. I, p. 65.

## PERIOD BETWEEN THE TREATIES AND THE CESSION OF ALASKA TO THE UNITED STATES IN 1867.

Russia continues to exercise control over Bering Sea.

In addition to the foregoing, there is found positive confirmation that by the treaties of 1824 and 1825 Russia did not surrender her claim to exclusive control of trade, and especially of the fur industry, in Bering Sea, in the fact that the same control over the waters of that sea was enforced after the date of those treaties as before.

Third charter of Company.

The second charter of the Russian American Company, which was granted for a period of twenty years, was confirmed in 1829,[2] except in so far as it had been modified by the treaties of 1824 and 1825, and was thus renewed with all its exclusive franchises for another period of twenty years on the 1st day of January, 1842. The new charter will be found in the Appendix.[3]

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[1] Vol. I, p. 68.

[2] Vol. I, p. 27.

[3] Vol. I, p. 28. The charter was not actually issued until Oct. 14, 1844.

Third charter of Company.

Its first section is as follows: "The Russian American Company, established for trading on the continent of Northwestern America, and on the Aleutian and Kurile Islands, and in every part of the Northeastern Sea, stands under the most high protection of His Imperial Majesty."

High value placed by Company upon fur-seal industry.

After this charter was granted, the Government continued to protect the sealing interests of the Company in Bering Sea, and of these the board at St. Petersburg wrote March 31, 1840, to the chief manager of the Colonies: "You will bear in mind that we look upon the fur-seal catch as the most important item of our colonial enterprises, which must be preserved at all hazards, even to the temporary neglect of other resources. Everything must be done to prevent a decrease or the extermination of these valuable animals."[1]

And March 20, 1853, the board, in writing to the chief manager of the Colonies, again used similar language in a letter more fully referred to below: "The board of administration respectfully requests that, in case the interests of the Company require a deviation from your plans, your Excellency will never lose sight of the fact that the interests of the Company are centred at the present time in the district surrounding the seal islands of the Pribilof and Commander groups, and that consequently the colonial waters must be visited by the Company's cruisers constantly and in every part, in order to watch and warn the foreign whalers."[1]

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[1] Vol. I, p. 71.

Waters frequented by fur-seals patrolled by armed cruisers.

The communication just cited throws much light upon the commercial activity of the Russian American Company, and may be accepted as indicative of the methods by which, during the last term of its charter, it enforced its control "in the colonial waters" of its interests "centered at the present time in the district surrounding the seal islands of the Pribilof group." It appears that during those years the Company gave employment to eight ships in the summer, and in the winter to seven, without counting its whale ships. Referring to the duties of one of its officials, who was to inspect certain of its stations, it is said: "This agent must observe and keep a record of all foreign ships seen during the voyage, and of the position of the same when observed, for the information of commanders of our armed cruisers and of the colonial authorities in Sitka, Kamchatka, and Ayan."

In the same letter is contained the following protective scheme, which had been adopted by

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[1] Vol. I, p. 72, 74.

Waters frequented by fur-seals patrolled by armed cruisers.

the Company, and which was to be carried out by its vessels during the summer of 1854:

"2. One of the larger vessels should leave the port of New Archangel (Sitka) for Ayan not later than the 15th of May, to arrive at the latter port at the end of June. This ship, which must be armed, will carry passengers, stores, and supplies for our Asiatic stations. On the outward voyage, the course of this vessel should be laid to the northward of the chain of the Aleutian Islands, in order to meet foreign ships entering Bering Sea and to warn them against cruising in pursuit of whales in the vicinity of the seal islands of the Pribilof and Commander groups. .

"3. A second small vessel, the swiftest of the fleet, probably the *Menshikof*, with a naval crew and commanded by a naval officer, must sail from Sitka at the end of April for the sole purpose of watching the foreign whale ships in the southern part of Bering Sea and along the chain of the Aleutian Islands. On this vessel supplies may be forwarded to Copper and Bering Islands and perhaps to Attu and Atka. . . . This vessel must be kept cruising constantly over the waters mentioned above, and must not enter any of the harbors except for the purpose of obtaining water and wood, on which occasions the stay of the

**Waters frequented by fur-seals patrolled by armed cruisers.**

vessel must be limited to the briefest possible period. Each of the above-mentioned islands must be visited by this cruiser at least twice during the season. . . . The conclusion of this cruising voyage depends upon the time at which the foreign whale ships leave Bering Sea, which is probably at the end of August or the beginning of September. . . .

"5. The second large vessel must be employed to supply the islands of the Unalaska district, the Pribilof Islands, and St. Michael's redoubt, and also to carry on intercourse with the coast tribes of Bering Sea on the Asiatic as well as on the American coasts. . . . During the whole time of the presence of this ship in the northern part of Bering Sea and the vicinity of the Pribilof Islands, the commander must be charged with the duty of cruising in search of foreign whale ships and of English vessels carrying on trade with our savages. This ship, also, must make no prolonged stay at any anchorage, and must be placed under the command of a naval officer, with a crew consisting principally of sailors of the navy. . . .

"7. The fourth large vessel of the fleet, which may be used for voyages to Kamchatka, must also be fitted out as an armed cruiser, and kept in readiness to proceed to any point in Bering

Waters frequented by fur-seals patrolled by armed cruisers.

Sea or in Siberian waters, from which the presence of foreign ships may be reported by the smaller vessels in the course of the season. . .

"In transmitting to your Excellency the above outlined plan for the employment of the colonial fleet, the board of administration respectfully requests that, in case the interests of the Company require a deviation from our plans, your Excellency will never lose sight of the fact that the interests of the Company are centred at the present time in the district surrounding the seal islands of the Pribilof and Commander groups and that consequently the colonial waters must be visited by the Company's cruisers constantly, and in every part, in order to watch and warn the foreign whalers. For this purpose detailed instructions have been formulated for our cruisers, as well as for the commanders of the whale ships of the Company, which are obliged to serve in the capacity of cruisers when engaged in whaling in Bering Sea. In all cases, the command of a vessel under orders to cruise in colonial waters must be given to naval officers, who will thereby find an opportunity to make themselves acquainted with the routine of colonial transactions, while at the same time their rank will give authority to our proceedings."[1]

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[1] Vol. I, p. 72.

Further instructions as to cruising.

Under date of June 20, 1861, the chief manager of the Colonies wrote to Benzeman, of the Imperial navy, commanding the steamer *Alexander the Second*, in part, as follows: "It has come to my knowledge that in the present year two whaling vessels have sailed from San Francisco for the purpose of trading on the Pribilof Islands or of hunting in their vicinity. Consequently I would suggest that during your presence in those waters you will exercise the duties of an armed cruiser, to prevent any unlawful acts on the part not only of these vessels, but of any others which you may find in Bering Sea."[1]

Proclamation of 1864 as to trade in Russian territory and waters.

Lastly, there was issued from Sitka in the year 1864 the following proclamation: "It is hereby proclaimed to all whom it may concern, that if any person or persons after reading these presents does not immediately abandon Russian territory or waters, or if they continue forbidden trade or traffic, they shall be seized immediately upon the arrival of the first Russian vessel upon the scene of their illegal transactions and taken for trial to New Archangel (Sitka); and all goods, as well as the vessel found in possession of such persons shall be confiscated."[2]

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[1] Vol. I, p. 74.
[2] Vol. I, p. 80.

Whaling company prohibited from visiting waters frequented by fur-seals.

In 1850 there had been granted to the Russo-Finnish Whaling Company a charter which contained the following provision: "The ships of the Whaling Company entering ~~the ports~~ of the Russian American Company are subject to harbor regulations established for the guidance of all shipping, but they must not anchor or cruise in waters where the presence of ships or the pursuit of whales may alarm any marine animals or interfere with the regulations of the Company for their protection and increase."[1]

While the foregoing only purports to be a municipal regulation, yet it is useful as furnishing another illustration of the constant protection which the Russian Government extended to its seal herds.

Period from 1862 to 1867.

The third charter of the Russian American Company expired in 1862, but the Company nevertheless continued to operate under it pending the decision of the question of its renewal for another term. With regard to the latter it was at first, in 1865, decided to extend the Company's privileges only to the region about Bering Sea;[2] but the following year it was determined by the Council of State, in an opinion which will be

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[1] Sec. II, § 9. The full text of the charter will be found in Tikhmenief, Vol. II, app. p. 1 *et seq.*

[2] Letter from the Department of Commerce and Manufactures to the board, June 19, 1865, containing report of the Minister of Finance, Vol. 1, p. 75.

**Period from 1862 to 1867.**

found in the Appendix,[1] that "the exclusive right of the Company to engage in the fur trade throughout the entire colonial territory shall be continued." No new charter, however, was granted, for the year following witnessed the transfer of the territory of Alaska to the United States.

**Conclusions from foregoing review.**

From the foregoing historical review it appears:

First. That prior and up to the date of the treaties of 1824 and 1825, Russia did assert and exercise exclusive rights of commerce, hunting, and fishing on the shores and in all the waters of Bering Sea.

Second. That the body of water known as Bering Sea was not included in the phrase "Pacific Ocean," as used in the treaty of 1825.

Third. That after said treaty of 1825 the Russian Government continued to exercise exclusive jurisdiction over the whole of Bering Sea up to the time of the cession of Alaska to the United States, in so far as was necessary to preserve to the Russian American Company the monopoly of the fur-seal industry and to prohibit the taking on the land or in the water by any other persons or companies of the fur-seals resorting to the Pribilof Islands.

Fourth. That before and after the treaty of 1825, and up to the date of the cession of Alaska to the United States, British subjects and British vessels were prohibited from entering Bering Sea to hunt fur-seals, and that it does not appear that the British Government ever protested against the enforcement of this prohibition.

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[1] Vol. I, p. 79.

### CESSION OF ALASKA TO THE UNITED STATES BY THE TREATY OF 1867.

Russia ceded to United States a portion of Bering Sea. No objection made.

On March 30, 1867, the Governments of the United States and Russia celebrated a treaty, whereby all the possessions of Russia on the American continent and in the waters of Bering Sea were ceded and transferred to the United States.[1] This treaty, which, prior to its final consummation, had been discussed in the Senate of the United States[2] and by the press, was an assertion by two great nations that Russia had heretofore claimed the ownership of Bering Sea, and that she had now ceded a portion of it to the United States; and to this assertion no objection is ever known to have been made.

Boundaries of territory ceded.

Article I of this treaty establishes the boundaries of the territory ceded. It takes for the eastern boundary the line of demarcation

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[1] Vol. I, p. 43.

[2] House Ex. Doc. No. 177, Fortieth Congress, second session, pp. 124 *et seq.*

Boundaries of territory ceded.

between the Russian and the British possessions in North America, as that line was established by the British-Russian treaty of 1825.[1] On the west the line of demarcation is stated as follows: "The western limit, within which the territories and dominion conveyed are contained, passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the Island of Krusenstern, or Ignalook, and the Island of Ratmanoff or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's Straits and Behring's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian, of one hundred and seventy-two west longitude; thence from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attu and the Copper Island of the Kormandorski couplet or group in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."

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[1] Vol. 1, p. 39.

Cession unincumbered.

Article VI contains the following stipulation: "The cession of the territory and dominion herein made is hereby delared to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions by any associated companies, whether corporate or incorporate, Russian, or any other, or by any parties, except merely private individual property holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto."

Russia's rights over sealeries passed to United States.

The conclusion is irresistible from a mere reading of this instrument that all the rights of Russia as to jurisdiction and as to the sealeries in Bering Sea east of the water boundary fixed by the treaty of March 30, 1867, passed unimpaired to the United States under that treaty. In fact, the British Government has announced its readiness to accept this conclusion without dispute.[1]

Review of jurisdiction exercised by Russia and her motives therefor.

The jurisdiction which Russia exercised over Bering Sea for a century prior and up to the date of the transfer of a portion of its coasts and waters to the United States has been so fully set forth that

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[1] Lord Salisbury to Mr. Blaine, Feb. 21, 1891, Vol. I, p. 294.

Review of jurisdiction exercised by Russia and her motives therefor.

no further amplification seems necessary. The controlling motive which inspired the exercise of this jurisdiction is also apparent from the foregoing historical review. It has been shown herein that the Russian American Company possessed a monopoly of the commerce of Russian territory in America, and administered its political affairs under the direction of the Imperial Government. It has also been seen that the great source of wealth of the Russian American Company was the fur-seals of the Pribilof Islands in Bering Sea, and that so jealously was this source of wealth guarded by the orders and authority of the Imperial Government that foreign vessels were prohibited from hunting seals in any part of Bering Sea, or in the passes of the Aleutian Islands; and that for the enforcement of this prohibition cruisers were employed in patrolling that sea so long as it remained Russian territory.

Value of furs taken prior to cession.

A high authority on the subject estimates the value of the furs (largely of seals) which were marketed by the Russians up to 1823 at a sum equal to about thirty-five million dollars[1]; and the same authority states that the furs taken and lost at sea and otherwise in those years exceeded the number which reached a market. Veniaminof, the Russian bishop, in his work on the

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[1] Berg, p. 168.

Value of furs taken prior to cession.

Pribilof Islands, on account of the great wealth derived from their annual harvest of furs, speaks of them as the "golden islands."[1] The tables which will be found in the Appendix[2] set forth the vast quantities of fur skins which were exported from the Colonies during the period of the Russian occupancy and how greatly they exceeded all other sources of revenue of the Russian American Company.

Their value well known to American negotiators, and the chief inducement for purchase of Alaska.

Their value was well known to the American negotiators of the treaty of 1867, and while it must be admitted that political considerations entered into the negotiations to a certain extent, yet so far as revenue to the Government and immediate profit to its people were concerned, it will appear from a careful study of the incidents attending the transfer of sovereignty that it was the fur industry more than all other considerations which decided the United States to pay the sum of seven million two hundred thousand dollars required by Russia for the cession and transfer of her sovereign rights and property.

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[1] Veniaminof, Vol. I, p. 277 : "These islands might be called *golden* on account of the high value of fur-seal and sea-otter skins shipped from there from their discovery up to the present time and of their promise for the future. . . . What an immense capital is represented by all the skins obtained from these islands, and what sums they will bring in the future, even with the present limited scope of the industry. There are not many such places in the world affording such wealth in so small a space and in return for so little exertion on the part of man."

[2] Vol. I, p. 125 *et seq.*

Report of congressional committee upon motives for purchase and rights thereby understood to have been acquired.

In the Fiftieth Congress a committee of the House of Representatives made a long and thorough investigation into all the facts attending the fur-seal industry and other interests of Alaska, including the history of its purchase from Russia. In its report, as one of the results of its lengthy examination, the committee made the following statement: "By referring to the debate (in Congress) on the purchase of Alaska, and the contemporaneous discussion of the subject by the periodicals and newspapers of this country, it will be noticed that the acquisition of the products of Bering Sea, its fur-bearing animals and fisheries were regarded as an important if not the chief consideration for the purchase."[1]

The committee then quoted the declaration of Hon. Charles Sumner, chairman of the Committee on Foreign Relations of the Senate, in the speech which he delivered in advocacy of the approval of the treaty of 1867, as follows: "The seal, amphibious, polygamous, and intelligent as the beaver, has always supplied the largest multitude of furs of the Russian Company."[2]

The congressional committee, after making various quotations from official and other sources,

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[1] House Ex. Doc. No. 3883, Fiftieth Congress, second session, p. xvii.

[2] *Ibid.* The speech will be found in House Ex. Doc. No. 177, Fortieth Congress, second session, p. 124.

Report of congressional committee upon motives for purchase and rights thereby understood to have been acquired.

further states: "It seems to the committee to have been taken for granted that by the purchase of Alaska the United States would acquire exclusive ownership of and jurisdiction over Bering Sea, including its products,—the fur-seal, sea-otter, walrus, whale, codfish, salmon, and other fisheries; for it is on account of these valuable products that the appropriation of the purchase money was urged.

"The extracts above quoted in reference to these products are emphasized by the fact that the fur-seal fisheries alone have already yielded to the Government a revenue greater than the entire cost of the territory.

"It seems clear to the committee that if the waters of Bering Sea were the 'high seas' these products were as free to our fishermen and seal-hunters as the Russians, and there was, therefore, no reason on that account for the purchase. But it was well understood that Russia controlled these waters; that her ships of war patrolled them, and seized and confiscated foreign vessels which violated the regulations she had prescribed concerning them; and the argument in favor of the purchase was that by the transfer of the mainland, islands, and waters of Alaska we would acquire these valuable products and the right to protect them."[1]

Revenue received by the United States from fur-seal industry acquired from Russia.

The committee, in the report quoted, in proof of the great value of the fur-seal industry acquired from Russia, cited the fact that it had already yielded to the Government a revenue greater than the entire cost of the territory. The tables in the appendix[2] show that there has been received by the United States Treasury directly from the lessees of the Pribilof Islands from 1870 to 1891, the sum $6,226,239; and that there has been received from import duty on the same skins after having been dressed and dyed in London approximately the further sum of $5,000,000; so that the total receipts of the United States Treasury from the Pribilof fur-seal skins have amounted to about $11,000,000. The tables appended[3] also establish the fact that fur-seal skins constitute more than half of the total value of all products obtained from Alaska from the time of the purchase in 1867 down to 1890. It thus appears that the high estimate of the fur-seals which was made at the time of the cession and purchase from Russia was not unfounded.

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[1] House Ex. Doc. No. 3883, Fiftieth Congress, second session, p. xix.

[2] Vol. I, p. 130.

[3] "Notes on the Fur Industry," etc., last paragraph. Vol. I, p. 125.

## ACTION OF THE UNITED STATES RELATIVE TO ALASKA SINCE THE SESSION.

Rights acquired from Russia illustrated by subsequent action of United States.

Further light is thrown upon the understanding had by the Government of the United States as to the value of the fur-seal industry and its right to protect it within the territory ceded by Russia in the Treaty of 1867, by an examination of the legislation of Congress enacted immediately after the transfer of this territory, of the acts of the Executive in carrying out this legislation, and of the decisions of the United States courts in regard to both.

Action of Congress.

By Section 1 of the act of July 27, 1868, Congress provided "that the laws of the United States relating to customs, commerce, and navigation be, and the same are hereby, extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Section 6 of the same act provided: "That it shall be unlawful for any person or persons to kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal, within the limits of said territory, or in the waters thereof. . . ."[1]

Action of Congress.

That the waters above referred to were those of the eastern half of Bering Sea not only appears from the language of the treaty itself, but also from Mr. Sumner's definition of this language publicly given in the Senate o the United States. In the speech already cited, in describing the line of demarcation drawn in the treaty through Bering Sea, he refers to it as making the western boundary of our country the dividing line which separates Asia from America; and he speaks of the waters contained within this boundary as "our part of Bering Sea."[2]

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[1] The above sections have been respectively incorporated into the Revised Statutes of the United States as sections 1954 and 1956, Vol. I, p. 95.

[2] House Ex. Doc. No. 177, Fortieth Congress, second session, at p. 125. Following are extracts from the above speech: "Starting from the Frozen Ocean, the western boundary descends Behring Straits midway between the two islands of Krusenstern and Ratmanof, to the parallel of 65° 30′, just below where the continents of America and Asia approach each other the nearest; and from this point it proceeds in a course nearly southwest through Behring Straits, midway between the island of St. Lawrence and Cape Choukotski, to the meridian of 172° west longitude, and thence, in a southwesterly direction, traversing Behring Sea, midway between the island of Attu on the east and Copper Island in the west, to the meridian of 193° west longitude, leaving the prolonged group of the Aleutian Islands in the possessions now transferred to the United States, and making the western boundary of our country the dividing line which separates Asia from America."

* * * * *

"In our part of Behring Sea there are five considerable islands, the largest of which is St. Lawrence, being more than ninety-six miles long."

Action of Congress.

By the act of March 3, 1869, Congress provided "That the islands of St. Paul and St. George, in Alaska, be, and they are hereby, declared a special reservation for Government purposes;"[1] and on July 1, 1870, an act of Congress was approved, entitled "An Act to prevent the extermination of fur-bearing animals in Alaska,"[2] particular reference being had to the fur-seals of the Pribilof Islands.

By the use of the term "in Alaska" in the two foregoing acts, Congress clearly recognized the fact that Bering Sea was a part of the territory of Alaska, for the islands therein referred to are situated at a distance of two hundred miles from the mainland.

Action of the Executive.

The executive branch of the United States Government, in carrying out the foregoing congressional legislation, has uniformly held that the United States have authority to protect their sealing interests throughout that portion of Bering Sea contained within the western boundary referred to in the treaty of 1867.

On the 12th of March, 1881, the Treasury Department so interpreted the law in a letter written to Mr. D. A. Ancona, collector of customs at San Francisco.[3] Speaking of this western boundary,

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[1] Vol. I, p. 92, (15 Stat., 348.)
[2] Vol. I, p. 92, (16 Stat., 180.)
[3] Vol. I, p. 102.

Action of the Executive.

it is said: "All the waters within that boundary to the western end of the Aleutian Archipelago and chain of islands are considered within the waters of Alaska Territory. All the penalties prescribed by law against the killing of fur-bearing animals would, therefore, attach against any violation of law within the limits before described.'

This decision was confirmed by the Treasury Department April 4, 1881, and again on March 6, 1886. On this last occasion the Secretary of the Treasury wrote as follows: "The attention of your predecessor in office was called to this subject on April 4, 1881. This communication is addressed to you, inasmuch as it is understood that certain parties at your port contemplate the fitting out of expeditions to kill fur-seals in these waters. You are requested to give due publicity to such letters, in order that such parties may be informed of the construction placed by this Department upon the provision of law referred to."[1]

Revenue cutters sent to Bering Sea to protect fur-seal life.

Since the year 1867 the Treasury Department has, every year, with a single exception, sent one or more revenue cutters to Bering Sea for the purpose of guarding the interests of the United States centered there,[2] including the protection

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[1] Vol. I, p. 103.

[2] Letter of the Secretary of the Treasury to the Secretary of State, July 15, 1892, Vol. I, p. 110.

Vessels seized in 1886 and 1887.

of fur seals against infractions of the law relating to them; and that this law was not regarded as a dead letter is attested by the fact that in 1886, prior to which time vessels had not entered Bering Sea in any numbers for the purpose of pelagic sealing, there were seized in those waters four vessels, three of them British, while in the following year there were seized fifteen vessels, of which six were British; the foregoing vessels, with a single exception, being found at a distance greater than three miles from any land.[1]

In 1888 unofficial assurances were given to the British Government that no seizures would be made; for at that time negotiations were being carried on looking to an amicable adjustment of the points at issue with regard to Bering Sea.[2]

Congress ratifies action of Executive.

By act of March 3, 1889,[3] Congress in effect ratified the interpretation heretofore made by the Executive as to the boundary of the United States in Bering Sea, as well as the seizures of vessels made under its orders in the years 1886 and 1887. This is apparent both from the language of the act and from the debates which preceded its enactment. Its third section is as follows: "That section 1956 of the Revised

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[1] Table of vessels seized in Bering Sea, Vol. I, p. 108.
[2] Mr. Edwardes to Mr. Blaine, Vol. I, p. 199.
[3] Vol. I, p. 99.

Statutes of the United States is hereby declared to include and apply to all the dominions of the United States in the waters of Bering Sea, and it shall be the duty of the President at a timely season in each year to issue his proclamation and cause the same to be published, for one month at least, in one newspaper (if any such there be) published at each United States port of entry on the Pacific coast, warning all persons against entering such waters for the purpose of violating the provisions of said section, and he shall also cause one or more vessels of the United States to diligently cruise said waters, and arrest all persons and seize all vessels found to be or to have been engaged in any violation of the laws of the United States therein."

President's proclamation.

Annually since the enactment of this law the President of the United States has issued his proclamation accordingly,[1] and in the year 1889 the revenue cutters again seized vessels disregarding its provisions, capturing in all six, five of which were British.[2]

Vessels seized in 1889.

In the month of June, 1891, the United States and Great Britain agreed upon the *Modus Vivendi*,[3] under the terms of which both Governments undertook to protect seal life in the waters of

The *Modus Vivendi*.

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[1] Vol. I, p. 112.
[2] Table of vessels seized in Bering Sea, Vol. I, p. 108.
[3] Vol. I, p. 317.

Bering Sea, and in May, 1892, this *Modus* was renewed for the season of 1892.[1]

Action of United States courts.

Lastly, the United States courts, whenever the question has come up before them, have refused to interfere with the executive branch of the Government in its interpretation of the treaty of 1867 and of the laws of Congress enacted on the basis of what the United States acquired by this treaty. The question as to the legality of the seizures of British vessels made by the United States revenue cutters in the year 1887 within the eastern portion of Bering Sea and at a distance greater than three miles from any land came up for decision before Judge Dawson, of the United States court for the district of Alaska. The opinion, which was filed October 11, 1887, is given in full in the Appendix.[2] It will be seen by reference to it that the court held that the United States Government has authority to protect seal life throughout the eastern part of Bering Sea, included within what is termed the western boundary line in the treaty of 1867. Other decisions to the same effect will be found in the Appendix.[2]

Summary.

The foregoing references are made in order to

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[1] Vol. I, p. 6.
[2] Vol. I, p. 115.

**Summary.**

**The United States do not rest their case altogether upon jurisdiction over Bering Sea.**

show: first, the understanding which existed in the United States, at the time of the purchase and cession of Alaska, as to the scope and effect of the jurisdiction exercised by Russia over the waters of Bering Sea, and the enhanced value which was thereby placed upon the fur-seal herd of the Pribilof Islands; and second, that the United States have since the purchase continued to exercise the same jurisdiction for the purpose of protecting the herd. But in determining what right of protection or property this Government has in the fur-seals frequenting the islands of the United States in Bering Sea when such seals are found outside of the ordinary three-mile limit, it is not compelled, neither does it intend, to rest its case altogether upon the jurisdiction over Bering Sea established or exercised by Russia prior and up to the time of the cession of Alaska. It asserts that, quite independently of this jurisdiction, it has a right of protection and property in the fur-seals frequenting the Pribilof Islands when found outside the ordinary three-mile limit, and it bases this right upon the established principles of the common and the civil law, upon the practice of nations, upon the laws of natural history, and upon the common interests of mankind.

In order that this claim of right of protection and property may be clearly presented, it will be necessary to enter in some detail upon an examination of fur-seal life at the Pribilof Islands and elsewhere and of the various interests associated with it.

# PART SECOND.

## RELATING TO THE HABITS, PRESERVATION, AND VALUE OF THE ALASKAN SEAL HERD, AND TO THE PROPERTY OF THE UNITED STATES THEREIN.

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## RELATING TO THE HABITS, PRESERVATION, AND VALUE OF THE ALASKAN SEAL HERD, AND TO THE PROPERTY OF THE UNITED STATES THEREIN.

### HABITS OF THE ALASKAN SEAL.

### THE PRIBILOF ISLANDS.

The Pribilof Islands are the home of the Alaskan fur-seal (*Callorhinus ursinus*). They are peculiarly adapted by reason of their isolation and climate for seal life, and because of this peculiar adaptability were undoubtedly chosen by the seals for their habitation.[1] The climatic conditions are especially favorable. The seal, while on land, needs a cool, moist, and cloudy climate, sunshine and warmth producing a very injurious effect upon the animals.[2] These requisite phenomena are found at the Pribilof Islands and nowhere else in Bering Sea or the North

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NOTE.—Names found in citations refer to depositions of same found in the Appendix.

[1] Charles Bryant, Vol. II, p. 4; Samuel Falconer, Vol. II, p. 164; T. F. Morgan, Vol. II, p. 61; C. M. Scammon, Vol. II, p. 475; Daniel Webster, Vol. II, p. 180; J. C. Redpath, Vol. II, p. 148.

[2] Samuel Falconer, Vol. II, p. 164.

Pacific, save at the Commander (Komandorski) Islands.[1]

Climate.

From May to November, inclusive (the period when the majority of the seals ~~are~~ on land), the mean temperature is between 41° and 42° F.;[2] during August, the warmest month, the mean is 47.2° F.;[3] during the warm months of June, July, and August the highest temperature reached was 62°, which occurred but once in eight years,[4] and the lowest was 28°, which was reached but once during the same period.[4] This constancy of temperature is further supplemented by the absence of sunshine and the almost continual presence of fogs, mists, or light rains.[5] During eight years the mean percentage of cloudiness on the islands for the months of June, July, and August was 92;[6] while during that period of eight years, consisting of seven hundred and thirty-six days, but eight clear days occurred and during the months of August not one.[4] The same peculiarity of climatic condition has also been observed at the antarctic coasts and islands once frequented by vast herds of fur-seals.[1]

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[1] Charles Bryant, Vol. II, p. 4.

[2] Samuel Falconer, Vol. II, p. 164; T. F. Morgan, Vol. II, p. 61; Weather Bureau Tables, Vol. I, p. 591.

[3] Weather Bureau Tables, Vol. I, p. 591.

[4] Weather Bureau Tables, Vol. I, p. 592.

[5] Charles Bryant, Vol. II, p. 4; Samuel Falconer, Vol. II, p. 164; T. F. Morgan, Vol. II, p. 61; J. Stanley Brown, Vol. II, p. 12.

[6] Weather Bureau Tables, Vol. I, p. 593.

Climate.

Home of the fur-seal.

The Alaskan seals evidently consider the Pribilof Islands as their home, for while on or about them they are much less timid and fearful than when met with in the sea along the American coast.[2] Capt. C. N. Cox, master of the schooner *E. B. Marvin*, who was examined by Collector Milne, of the port of Victoria, British Columbia, in 1892, says; "They (the seals) seem to be right at home there (in the waters adjacent to the islands) and not travelling about so much."[3]

St. Paul and St. George.

The two islands, St. Paul and St. George, are the only ones of the Pribilof group on which breeding seals land. The shores, comparatively limited, occupied by the animals are termed "rookeries" and are divided into "breeding grounds" and "hauling grounds."[4]

"Breeding grounds."

The "breeding grounds" or "breeding rookeries" (the areas occupied by the breeding seals and their offspring) are rocky areas along the water's edge, covered with broken pieces of lava of various sizes and shapes, those nearest the sea having been rounded by the action of the waves

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[1] James W. Budington, Vol. II, p. 594.

[2] Samuel Falconer, Vol. II, p. 165; Daniel Webster, Vol. II, p. 182.

[3] British Blue Book, U.S. No. 3 (1892); C—6635, p. 176.

[4] J. Stanley Brown, Vol. II, p. 12.

"Breeding grounds."

and the ice; between the rocks are sometimes found smooth spaces of ground, but in no case are these areas of any extent, and they vary greatly in size. That these rough, uneven shores are chosen for the breeding grounds is probably because the bowlders act as a protection to the new-born seals from the surf and storms,[1] and also because the smoother rocks offer convenient resting places for the female seals in parturition.[2]

"Hauling grounds."

The "hauling grounds" (areas occupied by the non-breeding seals) are the sandy beaches at one side of the breeding grounds, or the smoother spaces back of and contiguous to the breeding seals.[3] The areas covered by the rookeries on the respective islands vary considerably, being in the ratio of about seven or eight on St. Paul to one on St. George. St. Paul is much lower than St. George, the shores are broader, and more territory is available upon it for occupation by seals than on the latter, which accounts in a measure for the disproportion in seal population on the two islands.[4] The former island has ten rookeries (the largest being the Northeast Point Rookery), and the latter has five.[5]

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[1] S. N. Buynitsky, Vol. II, p. 21.
[2] J. Stanley Brown, Vol. II, p. 15.
[3] J. Stanley Brown, Vol. II, p. 12; Samuel Falconer, Vol. II, p. 164.
[4] J. Stanley Brown, Vol. II, p. 11.
[5] J. Stanley Brown, Vol. II, p. 13.

Census of seal life impossible.

From the nature of the ground covered by the breeding seals it is impossible to reach even an approximate estimate of the number of seals on these islands.[1] The roughness and unevenness of the breeding grounds preclude the possibility of calculating the number in a given area, so as to obtain a rule which can be applied to other rookeries or to other portions of the same rookery in estimating the seal population. The density of seal life varies according to the size and frequency of the rock masses and what might be a correct rule for one locality would be entirely incorrect for another. Besides this, the seals are constantly in motion, the females continually going to and coming from the water and new occupants of the breeding grounds are incessantly arriving.[2] Under these circumstances it is clearly evident that all estimates which attempt to fix the actual number of seals are so unreliable as to be worthy of no consideration for present or future calculations.[3]

Determination of increase or decrease of seals.

On the other hand, any considerable increase or decrease in the seals on the islands can at

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[1] W. B. Taylor, Vol. II, p. 176; J. H. Moulton, Vol. II, p. 71; B. F. Scribner, Vol. II, p. 89; H. A. Glidden, Vol. II, p. 110; H. H. McIntyre, Vol. II, p. 48; H. N. Clark, Vol. II, p. 159; Daniel Webster, Vol. II, p. 181.

[2] W. B. Taylor, Vol. II, p. 176; H. A. Glidden, Vol. II, p. 110; Daniel Webster, Vol. II, p. 181.

[3] W. B. Taylor, Vol. II, p. 176; J. H. Moulton, Vol. II, p. 71; B. F. Scribner, Vol. II, p. 89; H. A. Glidden, Vol. II, p. 110.

Determination of increase or decrease of seals.

once be recognized by one familiar with the rookeries. The spaces occupied by the breeding seals can be correctly measured.[1] If there has been an increase in the number of seals, the areas formerly occupied will be filled and new ground covered, for the seals crowd together on the breeding grounds as closely as the nature of the ground will permit.[2] Therefore, an increase in the extent covered by breeding seals is an infallible indication of an increase in the seal herd.

## THE ALASKAN SEAL HERD.

Distinction between Alaskan and Russian herds.

The two great herds of fur seals which frequent the Bering Sea and North Pacific Ocean and make their homes on the Pribilof Islands and Commander (Komandorski) Islands, respectively, are entirely distinct from each other. The difference between the two herds is so marked that an expert in handling and sorting seal skins can invariably distinguish an Alaskan skin from a Commander skin.[3] Mr. Walter E. Martin, head of the London firm of C. W. Martin & Co., which has been for many years engaged in dressing and dyeing seal skins, describes the

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[1] W. B. Taylor, Vol. II, p. 177; J. H. Moulton, Vol. II, p. 71; B. F. Scribner, Vol. II, p. 89.

[2] J. H. Moulton, Vol. II, p. 71; Daniel Webster, Vol. II, p. 181.

[3] W. E. Martin, Vol. II, p. 569; C. W. Price, Vol. II, p. 521; George Bantle, Vol. II, p. 508; George Rice, Vol. II, p. 573; Alfred Fraser, Vol. II, p. 557.

Distinction between Alaskan and Russian herds.

difference as follows: "The Copper Island (one of the Commander Islands) skins show that the animal is narrower in the neck and in the tail than the Alaska seal, and the fur is shorter, particularly under the flippers, and the hair has a yellower tinge than the hairs of the Alaska seals."[1] In this statement he is borne out by Sneigeroff, a native chief on the Commander Islands and once resident on the Pribilof Islands.[2] C. W. Price, for twenty years a dresser and examiner of raw seal skins, describes the difference in the fur as being a little darker in the Commander skin.[3] The latter skin is not so porous as the Alaskan skin, and is more difficult to unhair.[4] The difference between the two classes of skins has been further recognized by those engaged in the sealskin industry in their different market value,[5] the Alaska skins always being held at from twenty to thirty per cent. more than the "Coppers" or Commander skins.[6] This difference in value has also been recognized by the Russian Government.[7]

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[1] W. E. Martin, Vol. II, p. 569.

[2] T. F. Morgan, Vol. II, p. 201.

[3] C. W. Price, Vol. II, p. 521; George Bantle, Vol. II, p. 508.

[4] John J. Phelan, Vol. II, p. 520.

[5] C. A. Williams, Vol. II, p. 537; W. E. Martin, Vol. II, p. 569; C. W. Price, Vol. II, p. 521; George Bantle, Vol. II, p. 508.

[6] C. A. Williams, Vol. II, p. 537; William C. B. Stamp, Vol. II, p. 575.

[7] C. A. Williams, Vol. II, p. 537.

Does not mingle with Russian herd.

These two herds of fur-seals do not intermingle,[1] each keeping to its own side of Bering Sea and the Pacific Ocean, and each following its own course of migration.[2] Dr. J. A. Allen, the well known authority on Pinnipeds,* and Curator of the American Museum of Natural History, says: "The Commander Islands herd is evidently distinct and separate from the Pribilof Islands herd. To suppose that the two herds mingle, and that the same animals may at one time be a member of one herd and at another time of the other, is contrary to what is known of the habits of migrating animals in general."[3] Capt. Charles J. Hague, who since 1878 has made about twenty voyages along the Aleutian Islands from Unalaska to Attu, mostly in the spring and fall of the year, states that he does not remember ever having seen fur-seals in the water between Four Mountain Islands and Attu

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[1] Report of American Bering Sea Commissioners, *post*, p. 323; J. Stanley Brown, Vol. II, p. 12; Charles Bryant, Vol. II, p. 4; C. A. Williams, Vol. II, p. 537; Gustave Niebaum, Vol. II, p. 78; Arthur Newman, Vol. II, p. 210; C. H. Anderson, Vol. II, p. 205.

[2] H. H. McIntyre, Vol. II, p. 42; C.M. Scammon, Vol. II, p. 474; John P. Blair, Vol. II, p. 194.

[3] Article by Dr. Allen, Part III, Vol. I, p. 406; see also Report of American Bering Sea Commissioners, *post*, p. 323.

* Dr. Allen, at the request of the Department of State, has prepared a paper on Pinnipedia, Seal Hunting in the Antarctic Regions, the Alaska Seal Herd and Pelagic Sealing, which will be found in Vol. I, pp. 365–410, to which the attention of the Tribunal of Arbitration is especially directed.

Does not mingle with Russian herd.

Island.[1] Between parallels 174° west and 175° east seals are seldom seen,[2] and only a few scattering ones are seen at long intervals in the neighbourhood of Attu Island, which probably, from the course in which they are traveling, are members of the Commander herd.[3] Pud Zaotchnoi, one of the native chiefs of the Aleuts of Atka Island, says: "The fur-seal is only rarely seen about this region, scattering ones being seen occasionally during the months of September, October and November, traveling from the northward to the southward through the passes beween Atka and Amlia islands. Those seen are always gray pups, and usually appear after a blow from the northeast. The most I ever saw in any one year was about a dozen . . . I have never seen large bulls or full grown fur-seals in this region.[4] These gray pups are the young born that season, which having left the islands in the autumn are driven out of their course by the storms, being unable to battle against the waves as the older seals do. A further evidence that seals do not frequent the waters between the parallels of longitude men-

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[1] Charles J. Hague, Vol. II, p. 207.

[2] Arthur Newman, Vol. II, p. 210; C. H. Anderson, Vol. II, p. 205.

[3] Eliah Prokopief, Vol. II, p. 215; Filaret Prokopief, Vol. II, p. 216; Samuel Kahoorof, Vol. II, p. 214.

[4] Vol. II, p. 213; Kassian Gorloi, Vol. II, p. 212.

Does not mingle with Rusian herd.

tioned is the fact that sealing vessels are seldom seen in those regions, and never remain any length of time.[1]

Classification.

In considering the habits of the Alaskan seal the herd will be divided into four classes, based upon age and sex.

First. The pups, or pup seals, being the seals of both sexes under one year of age.

Second. The bulls, or "sekatchie," being the male seals from six or seven years old upwards, which are able to maintain themselves on the breeding grounds.

Third. The cows, or "matkie," being the female seals over one year old.

Fourth. The bachelors or "holluschuckie," being the non-breeding male seals, their age ranging from one to five or six years.

All references hereafter made to seals, unless specifically stated to the contrary, pertain to the Alaskan fur-seal, and all mention of rookeries refers exclusively to those located on St. Paul and St. George islands of the Pribilof group.

## THE PUPS.

Birth.

The pup is born on the breeding grounds during the months of June or July.[2] Its birth

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[1] Eliah Prokopief, Vol. II, p. 215; Kassian Gorloi, Vol. II, p. 212.

[2] T. F. Morgan, Vol. II, p. 61; Samuel Falconer, Vol. II, p. 164.

Birth.

usually occurs within a day or two after the mother seal arrives on the island,[1] and often within a few hours.[2] A young seal at birth weighs from six to eight pounds, its head being abnormally large for the size of its body;[3] it is almost black in color, being covered with a short hair, which changes to a silver-gray color after the pup learns to swim.[4] These two grades of pups are distinguished by the names "black pups" and "gray pups." The coat of hair is its only covering, the under coat of fur not being found on the new-born seal.[5]

Inability to swim.

For the first six or eight weeks of its life the pup is confined entirely to the breeding grounds, being unable to swim.[6] Mr. Thomas F. Morgan, for nearly twenty years located on the Pribilof Islands as one of the agents of the lessees, states that he has often seen young pups washed off by the surf and drowned.[7] Dr. W. L. Hereford, for many years resident physician on the Pribilof Islands, relates that a pup being found which

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[1] Charles Bryant, Vol. II, p. 4.

[2] Charles Bryant, Vol. II, p. 4; J. Stanley Brown, Vol. II, p. 13; Anton Melovedoff, Vol. II, p. 144; J. C. Redpath, Vol. II, p. 148.

[3] Daniel Webster, Vol. II, p. 180.

[4] Samuel Falconer, Vol. II, p. 164.

[5] J. H. Moulton, Vol. II, p. 72.

[6] Anton Melovedoff, Vol. II, p. 144; Aggie Kushin, Vol. II, p. 129; Karp Buterin, Vol. II, p. 104; John Fratis, Vol. II, p. 108; Article by Dr. Allen, Part III, Vol. I, p. 407; Daniel Webster, Vol. II, p. 180.

[7] Vol. II, p. 61.

Inability to swim.

had lost its mother, was placed near the water's edge in order that it might swim to an adjoining rookery and perchance find its parent. "Day after day" he continues, "this pup was watched, but it would not go near the water, and neither did its mother return. After several days or so, a new employé of that season only, and knowing nothing whatever of fur-seal life and habits, coming along that way and finding the pup in the grass, thinking probably that he had gotten lost from the other side, took him up and threw him into the water, with a view of giving him a chance of swimming back home. It was mistaken kindness, however, for he was immediately drowned,"[1] Dr. H. H. McIntyre, for twenty years on the islands as superintendent of the Alaska Commercial Company, and who has made the seal habits and industry a life study, states "that it should be particularly noted that they (the pups) are not amphibious until several weeks old,"[2] Mr. J. H. Moulton, who was assistant Treasury agent on the islands for seven years, states that he "has seen pups thrown in the water when their heads would immediately go under, and they would inevitably drown

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[1] Vol. II, p. 34.
[2] Vol. II, p. 41.

Inability to swim.

if not rescued."[1] The fact that they are unable to swim is further evidenced by their manifest dread of the water. Mr. J. Stanley Brown, a scientist detailed by the United States Government to investigate seal life on the Pribilof Islands, says: "The pups are afraid of the water; they have to learn to swim by repeated effort, and even when able to maintain themselves in the quiet waters will rush in frantic and ludicrous haste away from an approaching wave."[2] Capt. Bryant, Treasury agent in charge of the Pribilof Islands from 1869 to 1877, and who previous to that had been a whaling captain in Bering Sea, says: "They run back terrified whenever a wave comes in."[3] He is supported in this statement by Mr. Samuel Falconer,[4] Gen. Scribner,[5] and Mr. Wardman, who have been Treasury agents on the Pribilof Islands, the latter adding that "young pups can not be driven into the water by man, and when I tried to drive them in before they had learned to swim, they would immediately run back from the water.[6]

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[1] Vol. II, p. 72.
[2] Vol. II, p. 16.
[3] Vol. II, p. 5.
[4] Vol. II, p. 164.
[5] Vol. II, p. 89.
[6] Vol. II, p. 178.

Aquatic birth impossible.

In view of the foregoing circumstances, it is clear that it is an impossibility for a pup seal to be born in the water and live; this is confirmed by the statements of all those who have studied into or had experience with seal life;[1] and is well known to be a peculiarity of all Pinnipedia.[2] Prof. W. H. Dall, a recognized authority on all Alaskan matters, states that a pup born under such circumstances would unquestionably perish, and further adds that "when it is the habit of an animal to give birth to its young upon the land, it is contrary to biological teaching and common sense to suppose that they could successfully bring them forth in the water."[3] Mr. Stanley Brown, in considering this question says: "Were not the seals in their organs of reproduction, as well as in all the incidents of procreation, essentially land animals, the fact that the placenta remains attached to the pup by the umbilical cord for twenty-four hours or even more after birth, would show the impossibility of aquatic birth. I have seen pups dragging the caul over the ground on the third day after birth. Even could the pup stand

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[1] T. F. Morgan, Vol. II, p. 62; Charles Bryant, Vol. II, p. 5; Kerrick Artomanoff, Vol. II, p. 100.

[2] Appendix C, Report of American Bering Sea Commissioners, *post*, p. 327.

[3] Vol. II, p. 23.

Aquatic birth impossible.

the buffeting of the waves it could not survive such an anchor. No pup could be born in the water and live."[1] To these unqualified statements of experts and scientists are added those of a large number of Indians and seal hunters along the American coast, and an instance which took place during the Russian occupation puts the impossibility of pelagic birth beyond question. The following is an extract from a letter dated June 20, 1859, by the Manager of St. Paul Island addressed to the chief manager, and inclosed in a letter dated May 13, 1860, from Capt. Ivan Vassilievitch Furuhelm to the board of administration of the Russian American Company:

"The female seals came this year in May at the usual time after the 'sekatches' had landed. Only a few had come ashore when, with a strong northwest wind, the ice came from the north. It closed around the islands and was kept there by the wind for thirteen days. The ice was much broken and was kept in motion by the sea.

"It is an actual fact, most gracious sir, that the females could not reach the shore through the ice. Some of the Aleuts went out as far as it was safe to go on the larger pieces of ice and they saw the water full of seals. When the northwest gale ceased the ice remained for nearly a week longer, being ground up in the heavy swell and no females could land. A few 'sekatches' tried to go out to sea but did not succeed. On the 10th of June the first females began to land, but they came slowly, and it was very late when the rookeries began to fill. Very few of the females, no more than one out of twenty or twenty-five, had their young after they came ashore. Nearly all must have lost them in the water, as for many weeks since the ice went away the bodies of young seals have been washed up by the sea in thousands. This misfortune I must humbly report to you. It was not the work of man but of God."[1]

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[1] Vol. II, p. 15; Article by Dr. Allen, Part III, Vol. I, p. 406.

Birth on kelp beds impossible.

These statements also apply to birth on beds of kelp, or seaweed, for a new-born pup would undoubtedly be washed from such a resting place and perish. Andrew Laing, a seal hunter of long experience, who was examined by Mr. A. R. Milne, collector of the port of Victoria, British Columbia, states on such examination: "I have heard a great deal of talk of females having young on the kelp, too, but I don't think that it is so. Some hunters report of seeing pups off Middleton's Island, but I think that it is impossible."

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[1] Vol. I, p. 86.

He further stated that he did not think they could live continually in the water if born in it.[1]

Birth on kelp beds impossible.

Podding.

When the pups are from four to six weeks old they gather together on the breeding grounds into groups called "pods."[2] This act is called "podding." The "pods" by degrees work their way down to the water's edge and the pups begin to make use of their flippers.[3] Prior to this time the flippers have been used entirely for locomotion on land.

Locomotion on land.

The pup's manner of locomotion has been variously described as being similar to that of the pup of a Newfoundland dog[4] or of a young kitten.[5] The difference between the modes of locomotion of the pup and of the older seals is well stated by Mr. J. H. Moulton. He says "that it (the pup) uses its hind flippers as feet, running on them in much the same manner as other land animals, while a seal that has learned to swim drags his hind flippers, using his front flippers to pull himself along."[6]

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[1] British Blue Book, U. S. No. 3 (1892), C—6635, p. 184.

[2] Report of American Bering Sea Commissioners, *post*, p. 327; J. Stanley Brown, Vol. II, p. 16; H. H. McIntyre, Vol. II, p. 41; Charles Bryant, Vol. II, p. 5; H. W. McIntyre, Vol. II, p. 136; J. C. Redpath, Vol. II, p. 148.

[3] J. Stanley Brown, Vol. II, p. 16; H. H. McIntyre, Vol. II, p. 41; Charles Bryant, Vol. II, p. 5.

[4] J. Stanley Brown, Vol. II, p. 15.

[5] Samuel Falconer, Vol. II, p. 164.

[6] Vol. II, p. 72.

Learning to swim.

There are two methods by which a pup learns to swim. One is by a "pod" of pups getting near the edge of the water and finally, after repeated efforts, acquiring the use of their flippers.[1] Andrew Laing, already mentioned as one of the seal hunters lately examined by Collector Milne, of the port of Victoria, British Columbia, says: "They (the pups) will never take to the water freely themselves for from six weeks to two months."[2] The other method is by the mother seal taking the pup in her mouth and carrying it into the water, where, after several trials, it becomes able to sustain itself.[3]

Departure from islands.

After learning to swim the pup spends its time on land and in the water, but the greater portion is passed on land[4] until its final departure, which takes place generally about the middle of November,[5] but the time depends a great deal upon the weather.[6]

Dependence upon its mother.

During the entire time the pups remain upon the islands they are dependent solely upon their mothers for sustenance.[1] Prof. Dall says that the "pups require the nourishment of their mothers for at least three to four months after birth, and would perish if deprived of the same."[2] Others fix the period of weaning at at least four months.[3] Others say that the female seal suckles her young as long as it remains on the islands.[4] All agree that without this nourishment the pup would starve to death, and Dr. Hereford gives an account of endeavouring to raise a motherless pup by hand, which resulted in its death.[5]

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[1] H. H. McIntyre, Vol. II, p. 41; J. Stanley Brown, Vol. II, p. 16; T. F. Morgan, Vol. II, p. 62.

[2] British Blue Book, U. S. No. 3 (1892), C—6635, p. 184.

[3] Samuel Falconer, Vol. II, pp. 164–165; Charles Bryant, Vol. II, p. 5.

[4] Charles Bryant, Vol. II, p. 5; H. H. McIntyre, Vol. II, p. 41; T. F. Morgan, Vol. II, p. 62; Anton Melovedoff, Vol. II, p. 144; Daniel Webster, Vol. II, p. 180.

[5] H. H. McIntyre, Vol. II, p. 41; Charles Bryant, Vol. II, p. 5; Aggie Kushin, Vol. II, p. 130; C. L. Fowler, Vol. II, p. 25.

[6] H. H. McIntyre, Vol. II, p. 41; Charles Bryant, Vol. II, p. 5; Anton Melovedoff, Vol. II, pp. 144-145; John Fratis Vol. II, p. 108.

Dependence upon its mother.

In spite of the fact of its complete dependence upon its mother a pup can exist several days without food,[6] and demonstrates the wonderful vitality of the species.

Vitality.

## THE BULLS.

The bulls are the male seals from five or six to twenty years of age,[7] and weigh from four to seven hundred pounds.[8]

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[1] J. C. Redpath, Vol. II, p. 148.

[2] Vol. II, p. 23.

[3] J. Stanley Brown, Vol. II, p. 16; J. H. Moulton, Vol. II, p. 72.

[4] Samuel Falconer, Vol. II, p. 165; Charles Bryant, Vol. II, p. 5.

[5] Vol. II, p. 33.

[6] W. S. Hereford, Vol. II, p. 33; Nicoli Krukoff, Vol. II, p. 133; Kerrick Artomanoff, Vol. II, p. 100.

[7] H. H. McIntyre, Vol. II, p. 43; Charles Bryant, Vol. II, p. 6.

[8] Report of American Bering Sea Commissioners, *post*, p. 325; Samuel Falconer, Vol. II, p. 166; H. H. McIntyre, Vol. II, p. 58.

Arrival at islands.

They arrive on the breeding grounds in the latter part of April or first few days of May,[1] but the time is to a certain extent dependent on the going out of the ice about the islands.[2] The bull, if it is not his first experience upon the breeding grounds, endeavours to land upon the same rookery which he occupied in former years,[2] and in many cases the same bull has been observed to occupy the same position (generally a large rock[3]) on the same rookery for several successive years.[4] A position, however, is not obtained without many sanguinary battles between the rival bulls for the more coveted places near the water.[5]

Arrival of the cows.

Toward the latter part of May or first of June the cows begin to appear in the waters adjacent to the islands and immediately land upon the breeding grounds.[6] The great majority, however, do not haul up until the latter part of June;[1] and the arrivals continue until the middle of July.[2]

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[1] Appendix B, Report of American Bering Sea Commissioners, *post*, p. 385; J. Stanley Brown, Vol. II, p. 13; Nicoli Krukoff, Vol. II, p. 133; John Fratis, Vol. II, p. 108; J. C. Redpath, Vol. II, p. 148; C. L. Fowler, Vol. II, p. 25.

[2] Daniel Webster, Vol. II, p. 180.

[3] Report of American Bering Sea Commissioners, *post*, p. 325.

[4] J. C. Redpath, Vol. II, p. 148.

[5] Report of American Bering Sea Commissioners, *post*, p. 325; H. H. McIntyre, Vol. II, p. 43.

[6] Anton Melovedoff, Vol. II, p. 144; Aggie Kushin, Vol. II, p. 129; Nicoli Krukoff, Vol. II, p. 133; John Fratis, Vol. II, p. 108; C. L. Fowler, Vol. II, p. 25.

Arrival of the cows.

Organization of the harems.

Each bull, being polygamous, gathers about him as many cows as he can.[3] The number of cows to a "harem" (as the bull and his cows are called) varies according to the strength and position of the bull and the respective number of the sexes in the herd. The average is fixed at from fifteen to twenty-five.[4] Assistant Treasury Agent W. B. Taylor, who was on St. George Island in the year 1881, reports that he has seen forty cows in one harem and that the bull was constantly trying to obtain more.[5]

Powers of fertilization.

This is but one instance of the great powers of fertilization possessed by the male seal. Mr. Taylor further states that he believes a bull can serve over a hundred cows during a season;[5] Capt. Bryant says from seventy-five to one hundred;[6] and Gen. Scribner affirms it as his opinion that a bull could fertilize a hundred or more cows;[7] and he is supported in this by Capt. Daniel Webster, who, as agent of the lessees, has

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[1] J. Stanley Brown, Vol. II, p. 13.

[2] Anton Melovedoff, Vol. II, p. 144.

[3] J. Stanley Brown, Vol. II, p. 14; T. F. Morgan, Vol. II, p. 63.

[4] J. Stanley Brown, Vol. II, p. 14; Charles Bryant, Vol. II, p. 6.

[5] Vol. II, p. 177.

[6] Vol. II, p. 6.

[7] Vol. II, p. 89.

Powers of fertilization.

resided on the islands for over twenty-two years, and who prior to that time had been actively engaged in the sealing industry.[1] Dr. Allen thinks a bull is able to serve from forty to sixty cows.[2] Mr. Samuel Falconer states that a bull is capable of fertilizing at first six to eight cows a day.[3]

Coition.

The act of coition takes place upon land, which, by reason of the formation of the genital organs, is similar to that of other mammals.[4] It is violent in character, and consumes from five to eight minutes.[5] Copulation in the water is affirmed by Mr. Stanley Brown, Dr. McIntyre, and others to be impossible.[6] The former bases his opinion on careful observation and on the fact that the cow being so much smaller than the male (a cow weighs from seventy-five to one hundred and twenty pounds) she would be entirely submerged and would be compelled to remain beneath the surface longer than would be possible. Dr. McIntyre makes the assertion on twenty years of careful study of seal life under the most favorable circumstances. Undoubtedly the sea otter, whose habit of pelagic coition is well known, has often been mistaken for the fur-seal, which has resulted in many believing that the latter copulate in the water.[1] Mr. Falconer, although he does not affirm that the act of reproduction is impossible in the water, states that he does not believe it could be effectual, and that it would be most unnatural.[2] Dr. Allen, in considering this question, after giving an account of the jealous guardianship of the bull over his harem, says: "If parturition and copulation could occur in the sea, the exercise of any such tyrannical jurisdiction of the males over the females would be impossible, and the seraglio system, so well established, not only in the case of this species, but in all its allies, would not be the one striking feature in the sexual economy of the whole eared-seal family, wherever its representatives are found."[3] Coition.

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[1] Vol. II, p. 183.

[2] Article by Dr. Allen, Part III, Vol. I, p. 407.

[3] Vol. II, p. 166.

[4] Report of American Bering Sea Commissioners, *post*, p. 327; J. Stanley Brown, Vol. II, p. 14.

[5] Report of American Bering Sea Commissioners, *post*, p. 325; J. Stanley Brown, Vol. II, p. 14.

[6] Vol. II, p. 14; Vol. II, p. 42; J. M. Morton, Vol. II, p. 67.

Fasting. During the entire rutting season, which lasts for at least three months, the bulls remain constantly upon the breeding grounds, never leaving their positions, and never eating or drinking, and sleeping very little.[4]

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[1] Article by Dr. Allen, Part III, Vol. I, p. 407; J. Stanley Brown, Vol. II, p. 15.

[2] Vol. II, p. 165.

[3] Article by Dr. Allen, Part III, Vol. I, p. 407.

[4] T. F. Morgan, Vol. II, p. 63; Charles Bryant, Vol. II, p. 6.

Disorganization of the rookeries.

After all the cows have been fertilized and the pups begin to form into "pods," the order formerly existing on the breeding grounds gives place to disorder. The bulls no longer restrain the cows in their movements, and the rookeries become disorganized.[1]

Departure from islands.

Some of the bulls at this time (about the 1st of August) begin to leave the islands, and continue going till the early part of October.[2] They are very lean and lank after their long fast, but the following May return to the rookeries as thickly enveloped in blubber and as vigorous as the former season.[3]

Vitality.

The bull seal must necessarily possess almost unsurpassed powers of vitality and virility to remain for such a period without nourishment of any sort, and still be able to fertilize so many females.

### THE COWS.

The cows or breeding female seals are much smaller than the bulls, the average weight being less than one hundred pounds; the age of puberty is probably two years.[1]

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[1] J. Stanley Brown, Vol. II, p. 16; T. F. Morgan, Vol. II, p. 63; Aggie Kushin, Vol. II, p. 130; John Fratis, Vol. II, p. 108.

[2] H. H. McIntyre, Vol. II, p. 42; Samuel Falconer, Vol. II, p. 166; Anton Melovedoff, Vol. II, p. 144; Aggie Kuskin, Vol. II, p. 129.

[3] T. F. Morgan, Vol. II, p. 63; H. H. McIntyre, Vol. II, p. 43; J. C. Redpath, Vol. II, p. 148.

Age.

The exact age which is reached by a cow is necessarily a matter of conjecture, but microscopic examinations under the direction of Capt. Bryant showed that some of the older females had borne at least eleven to thirteen pups.[2] It is therefore safe to say that a cow lives to be at least fifteen years old.

Harem life.

After a cow lands on the rookeries and is delivered of her pup she is jealously guarded by the bull to whose harem she belongs, until again fertilized,[3] which probably takes place within two weeks.[4] The exact period of gestation is not definitely known, but is believed to be about fifty weeks.[5]

Number of pups at a birth.

A cow produces but one pup at a birth,[6] and Mr. Falconer adds that "two at a birth is as rare an occurrence as a cow to bring forth two calves," and that during his entire experience of seven years he never heard of this happening

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[1] H. H. McIntyre, Vol. II, p. 42; Samuel Falconer, Vol. II, p. 165.
[2] Vol. II, p. 6.
[3] J. Stanley Brown, Vol. II, p. 15.
[4] Samuel Falconer, Vol. II, p. 165.
[5] Report of American Bering Sea Commissioners, *post*, p. 326.
[6] W. H. Dall, Vol. II, p. 24; T. F. Morgan, Vol. II, p. 63; H. W. McIntyre, Vol. II, p. 136; Kerrick Artomanoff, Vol. II, p. 100.

Number of pups at a birth.

but once.[1] The young at birth are about equally divided as to sex.[2]

A cow as soon as a pup is brought forth begins to give it nourishment.[3] the act of nursing taking place on land and never in water,[4] and she will only suckle her own offspring.[2] This fact is verified by all those who have studied seal life or had experience upon the islands.[5] Mr. Morgan says: "The pup does not appear to recognize its mother, attempting to draw milk from any cow it comes in contact with; but a mother will at once recognize her own pup and will allow no other to nurse her. This I know from often observing a cow fight off other pups who approached her, and search out her own pup from among them, which I think she recognizes by its smell and cry."[6] Mr. Falconer says: "A mother will at once recognize her pup by its cry, hobbling over a thousand bleating pups to reach her own, and every other approaching her save this little animal she will

Nourishes only her own pup.

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[1] Vol. II, p. 165.

[2] Report of American Bering Sea Commissioners, *post*, p. 326.

[3] J. Stanley Brown, Vol. II, p. 15.

[4] Report of American Bering Sea Commissioners, *post*, p. 326. See also Appendix C of same, *post*, p. 387.

[5] W. H. Dall, Vol. II, p. 23; H. H. McIntyre, Vol. II, p. 41; Karp Buterin, Vol. II, p. 104.

[6] Vol. II, p. 62.

drive away."[1] These facts are verified by many others experienced in the habits of seals.[2]

Nourishes only her own pup.

This habit of a cow is another evidence of the absolute dependence of a pup seal upon its mother. Capt. Bryant says in this connection: "I am positive that if a mother seal was killed her pup must inevitably perish by starvation. As evidence of this fact I will state that I have taken stray, motherless pups, found on the sand beaches, and placed them upon the breeding rookeries beside milking females, and in all instances those pups have finally died of starvation."[3] Capt. Bryant's statement as to the certainty of death to the pup if its mother was destroyed is sustained by many experienced witnesses.[4]

Death of cow causes death of pup.

Necessarily after a few days of nursing her pup the cow is compelled to seek food in order to provide sufficient nourishment for her offspring.[5] Soon after coition she leaves the pup on the rookery and goes into the sea,[6] and as the

Feeding.

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[1] Vol. II, p. 164.

[2] J. H. Moulton, Vol. II. p. 71; W. S. Hereford, Vol. II, p. 33; Nicoli Krukoff, Vol. II, p. 133; John Fratis, Vol. II, p. 108; Daniel Webster, Vol. II, p. 180; J. C. Redpath, Vol. II, p. 148.

[3] Vol. II, p. 5.

[4] W. H. Dall, Vol. II, p. 23; George Wardman, Vol. II, p. 178.

[5] J. Stanley Brown, Vol. II, p. 15; Daniel Webster, Vol. II, p. 180.

[6] Report of American Bering Sea Commissioners, *post*, p. 329: H. H. McIntyre, Vol. II, p. 42; Samuel Falconer, Vol. II, p. 166; Article by Dr. Allen, Part III, Vol. I, p. 407; H. W. McIntyre, Vol. II, p. 136.

Feeding.

pup gets older and stronger these excursions lengthen accordingly until she is sometimes absent from the rookeries for a week at a time.[1]

Food.

The food of all classes of fur-seals consists of squids, fishes, crustaceans, and mollusks,[2] but squids seem to be their principal diet, showing the seals are surface feeders.[3] On account of the number of seals on the islands fish are very scarce in the neighboring waters;[4] this necessitates the cow going many miles in search of her food.

Feeding excursions.

They undoubtedly go often from one hundred to two hundred miles from the rookeries on these feeding excursions.[5] This fact is borne out by the testimony of many experienced sealers, who have taken nursing females a hundred miles and over from the islands,[6] and Capt. Olsen, of the steam schooner *Anna Beck*, states, through the Victoria Daily Colonist, of August 6, 1887,

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[1] Nicoli Krukoff, Vol. II, p. 133; John Fratis, Vol. II, p. 108; Kerrick Artomanoff, Vol. II, p. 100.

[2] Report of American Bering Sea Commissioners, Appendix E, *post*, p. 393; W. H. Dall, Vol. II, p. 23; T. F. Morgan, Vol. II, p. 62.

[3] Report of American Bering Sea Commissioners, Appendix E, *post*, p. 396.

[4] S. N. Buynitsky, Vol. II, p. 21.

[5] Report of American Bering Sea Commissioners, *post*, p. 329.

[6] Michael White, Vol. II, p. 490; Alfred Irving, Vol. II, p. 386; James Sloan, Vol. II, p. 477; Martin Hannon, Vol. II, p. 445; Chad George, Vol. II, p. 366; Wilton C. Bennett, Vol. II, p. 357; Victor Jackobson, Vol. II, p. 328.

Feeding excursions.

(which is published in the British Blue Book, 1890, C–6131, p. 84), that "anyone who knows anything of sealing is aware that such a charge [catching seals in Alaskan waters within three leagues of the shore] is ridiculous, as we never look for seals within twenty miles of shore. They are caught all the way from between twenty and one hundred and fifty miles off the land." Capt. Dyer, of the seized sealing schooner *Alfred Adams*, confirmed the above statement by saying: "We had never taken a seal within sixty miles of Unalaska, nor nearer St. Paul than sixty miles south of it."[1] Among the depositions taken before Mr. A. R. Milne, collector of customs of the port of Victoria, British Columbia, several of the deponents give testimony as to the usual sealing distance from the Pribilof Islands while in Bering Sea. Capt. William Petit, present master and part owner of the steamer *Mischief*, gives such distance as from sixty to one hundred miles, and states that seals are found all along that distance from land in large numbers.[2] Capt. Wentworth Evelyn Baker, master of the Canadian schooner *C. H. Tupper*, and formerly master of the schooner *Viva*, says that the distance from land was from thirty to

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[1] British Blue Book, U. S. No. 2, 1890, C–6131, p. 108.

[2] British Blue Book, U. S. No. 3 (1892), C–6635, p. 171.

Feeding excursions.

one hundred miles, usually sixty miles.[1] And Capt. William Cox, master of the schooner *Sapphire*, places the principal hunting ground at one hundred miles from the islands of St. George and St. Paul.[2] Capt. L. G. Shepard, of the United States Revenue Marine, who seized several vessels while sealing in Bering Sea in 1887 and 1889, states: "I have seen the milk come from the carcasses of dead females lying on the decks of sealing vessels which were more than a hundred miles from the Pribilof Islands." He further adds that he has seen seals in the water over one hundred and fifty miles from the islands during the summer.[3] The course of sealing vessels and their daily catch show also that the majority of the seals taken in Bering Sea are secured at over one hundred miles from the Pribilof Islands.[4]

The distance that the seals wander from the islands during the summer in their search for food is clearly shown by the "Seal Chart" compiled from the observations of the American cruisers during their cruises in Bering Sea in July, August, and September, 1891.[5]

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[1] British Blue Book, U. S. No. 3 (1892), C-6635, p. 173.

[2] *Ibid.* p. 191.

[3] L. G. Shepard, Vol II, p. 189.

[4] Logs of sealing vessels seized, Vol. I, p. 525.

[5] "Seal Chart" in portfolio of maps and charts.

Speed in swimming.

The great distance of the feeding grounds from the islands is not remarkable, as the seals are very rapid swimmers and possess great endurance.[1] Thomas Mowat, Esq., inspector of fisheries for British Columbia, in the annual report of the Department of Fisheries of the Dominion of Canada (1886), at page 267, makes the following statement, which corroborates the foregoing: "Capt. Donald McLean, one of our most successful sealing captains, and one of the first to enter into the business of tracking seals from California to Bering Sea, informs me he has known bands of seals to travel one hundred to two hundred miles a day, feeding and sleeping during a portion of this time." Capt. Bryant, with long experience as master mariner of a whaling vessel, states that he is convinced that a seal can swim more rapidly than any species of fish, and that a female could leave the islands, go to the fishing grounds a hundred miles distant and easily return the same day.[2] But in case these excursions consumed a longer time, the peculiar physical economy of the pup seal makes it possible for it to exist several days without nourishment.[3]

Departure from islands.

The length of time that a pup is dependent upon its mother, as heretofore stated, compels

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[1] Charles Bryant, Vol. II, p. 6; W. S. Hereford, Vol. II, p. 35.

[2] Vol. II, p. 6.

[3] W. S. Hereford, Vol. II, p. 33; H. H. McIntyre, Vol. II, p. 41.

Departure from islands.

her to remain upon the islands until about the middle of November, when the cold and stormy weather induces her to depart, her pup being then able to support itself.

### THE BACHELORS.

Arrival at the islands.

The bachelor seals, or nonbreeding males, ranging in age from one to five or six years, begin to arrive in the vicinity of the islands soon after the bulls have taken up their positions upon the rookeries,[1] but the greater number appear toward the latter part of May.[2] They endeavor to land upon the breeding grounds, but are driven off by the bulls[3] and compelled to seek the hauling grounds.[4]

The killable class.

From this class of seals are chosen the ones which are killed on the islands for their pelts, the bachelor from two to five years being selected.[5] The life on the hauling grounds is passed in sleeping, wandering about, and making occasional trips to the water.[6] The older bachelors spend a good deal of time in the water, their instincts leading them to remain near the breed-

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[1] J. Stanley Brown, Vol. II, p. 13; H. H. McIntyre, Vol. II, p. 43; Anton Melovedoff, Vol. II, p. 144; J. C. Redpath, Vol. II, p. 149.

[2] S. N. Buynitsky, Vol. II, p. 21.

[3] Louis Kimmel, Vol. II, p. 173; Aggie Kushin, Vol. II, p. 129.

[4] J. C. Redpath, Vol. II, p. 149; Kerrick Artomanoff, Vol. II, p. 100.

[5] S. N. Buynitsky, Vol. II, p. 21; Samuel Falconer, Vol. II, p. 166.

[6] H. H. McIntyre, Vol. II. p. 42.

The killable class

ing grounds.[1] Mr. Falconer says that they always pursue a female when she is allowed to leave the harem and go into the water, but she always refuses them.[2] This is natural considering the fact that the cow is fertilized before being allowed to enter the water.[3]

Feeding.

Both Capt. Bryant and Mr. Morgan say that in their opinion the bachelor seals feed very litttle while located on the islands,[4] and Mr. Glidden states that "the bachelors once in a while go into the water, but remain in the vicinity of the islands."[5] Anton Melovedoff, the native chief on St. Paul Island for seven years (1884-1891) states that he has "found that the seals killed in May and early June were fat and that their stomachs were full of food, principally codfish, and that later in the season they were poor and had nothing in their stomachs," and that, in his opinion, "none but the mother seals go out in the sea to eat during the time the herds are on the islands."[6] And his opinion in this matter corresponds with the views of natives

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[1] H. H. McIntyre, Vol. II, p. 43.
[2] Vol. II, p. 165.
[3] *Ante*, p. 115.
[4] Vol. II, p. 6; Vol. II, p. 63.
[5] Vol. II, p. 100.
[6] Vol. II, p. 144.

Feeding.

and whites who have been long resident on the Pribilof Islands.[1]

Mingling with the cows.

When the rookeries become disorganized, the bachelors, no longer fearing the bulls, which possess great ferocity during the rutting season, even attacking man,[2] move down on to the breeding grounds, and pups, cows, and bachelors mingle together indiscriminately.[3]

Departure from islands.

Here the bachelors remain until the time of their departure, which generally takes place at the same time the cows[4] and pups leave the islands, though a few bachelors always are found after that period.[5]

## MIGRATION OF THE HERD.

The Alaskan seal herd is migratory from necessity, for when the weather has been particularly mild during certain winters seals have been found on land and in the vicinity of the islands the year round.[6] An examination of the table showing the annual killing of seals on St Paul Island for several years proves conclusively the presence of seals on the islands for at least eight months of the year, and that they have in fact been killed there in every month of the year.[1]

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[1] Karp Buterin, Vol. II, p. 103; Nicoli Krukoff, Vol. II, p. 133; John Fratis, Vol. II, p. 108; Daniel Webster, Vol. II, p. 180; J. C. Redpath, Vol. II, p. 149; Kerrick Artomanoff, Vol. II, p. 100.

[2] J. Stanley Brown, Vol. II, p. 14.

[3] J. Stanley Brown, Vol. II. p. 16.

[4] H. H. McIntyre, Vol. II, p. 41.

[5] Tables of killing on St. Paul Island, Vol. II, p. 114.

[6] H. H. McIntyre, Vol. II, p. 41; Charles Bryant, Vol. II, p. 5.

Causes.

The primal cause of migration is undoubtedly the severity of the winter weather,[2] and to that may be added a lack of food supply.[3] The seals evidently consider these islands their sole home, and only leave them from being forced so to do.[4] If the climate permitted they would without doubt remain on or in the vicinity of the Pribilof Islands during the entire year.[5] That this is true is evidenced by the fact of their so remaining during unusually warm winters, as above stated, and from the further fact that the seals of the Galapagos Islands, which much resemble in their habits the Alaskan herd, do not migrate, not being compelled so to do by the weather.[6] Capt. Budington, who has had twenty years' experience as a sealer in the southern hemisphere, states that "the Terra del Fuego and Patagonian seals never leave the rookeries or the waters in the vicinity, only going out into the inland waters in search

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[1] Table of killing on St. Paul Island, Vol. II, p. 114.

[2] W. H. Dall, Vol. II. pp. 23, 24; Charles Bryant, Vol. II, p. 5; Daniel Webster, Vol. II, p. 180.

[3] Same authorities.

[4] Charles Bryant, Vol. II, p. 5; Samuel Falconer, Vol. II, p. 165; Kerrick Artomanoff, Vol. II, p. 100.

[5] Charles Bryant, Vol. II, p. 5; T. F. Morgan, Vol. II, p. 62; Article by Dr. Allen, Part III, Vol. I, p. 405.

[6] C. W. Reed, Vol. II, p. 472; see also Isaac Liebes, Vol. II, p. 515.

Causes.

of food. About Terra del Fuego no ice forms, and no snow falls that remains. The temperature remains about the same summer and winter."[1]

The course.

The fact exists, however, that the Alaskan seal herd is compelled to migrate. The course pursued, which is confined to the eastern side of the Bering Sea and Pacific Ocean, is to a certain extent conjectural, but sufficient data have been collected to state it with approximate accuracy. On leaving the islands in November or December the seals turn southward, pass through the channels of the Aleutian chain, and enter the Pacific Ocean.[2] The bulls after entering the ocean remain in the waters south of the Aleutian Islands and the Alaskan Peninsula, and in the early spring may be found near the Fairweather Ground. They are seldom seen below Baranoff Island.[3] Turning eastward after entering the ocean[4] the remainder of the herd, cows, bachelors and pups, begin to appear off the coast of California the latter part of December or first of January.[5] The seals now turn northward,[6] following up the coast, twenty, thirty or more miles

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[1] J. W. Budington, Vol. II, p. 596.

[2] H. H. McIntyre, Vol. II, p. 42; T. F. Morgan, Vol. II, p. 62.

[3] Report of Capt. C. L. Hooper to the Treasury Department, dated June 14, 1892, Vol. I, p. 504.

[4] W. H. Dall, Vol. II, p. 24; Charles Bryant, Vol. II, p. 5.

[5] A. J. Hoffman, Vol. II, p. 446; Alfred Irving, Vol. II, p. 386.

[6] Charles Lutjens, Vol. II, p. 458; H. H. McIntyre, Vol. II, p. 42.

The course.

from land.[1] The males pass much farther from the shore than the females, and travel more rapidly toward the islands.[2] The herd spreads along the coast in a long, irregular body, continually advancing northward until they begin to enter Bering Sea in May and June, through the eastern passes of the Aleutian Islands, seldom going west of Four Mountain Pass, but the last of the herd do not leave the Pacific until July.[3] The cows, however, are practically out of the Pacific Ocean by the middle of June.[4] A chart showing this migration has been prepared from the data contained in the depositions herewith submitted.[5]

Manner of traveling.

The manner of traveling of the seals is divided by the pelagic sealers into different heads, namely, "sleeping," when a seal rests and sleeps on its back on the surface of the water with only its nose and the tips of its hind flippers protruding from the waves;[6] "finning," when it lies on its back gently moving its flippers;[7] "rol-

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[1] British Blue Book, U. S. No. 3 (1892), C-6635, p. 183; Annual Report of the Department of Fisheries, Dominion of Canada (1886), p. 267.

[2] Article by Dr. Allen, Part III, Vol. I, p. 405; Isaac Liebes, Vol. II, p. 454.

[3] Charles J. Hague, Vol. II, p. 207; C. H. Anderson, Vol. II, p. 205.

[4] H. H. McIntyre, Vol. II, p. 42; Watkins, Vol. II, p. 395; Alfred Irving, Vol. II, p. 386.

[5] See also Chart of Migration, Portfolio of maps and charts; British Blue Book, No. 3 (1892), C-6635, p. 183.

[6] A. B. Alexander, Vol. II, p. 355.

[7] *Ibid.*, Vol. II, p. 355.

The course.

ling," when lazily engaged in rolling over upon the surface of the water;[1] "traveling" or "feeding," when moving rapidly through the water,[2] and "breaching," when leaping out of the water like a dolphin.[2]

Herd does not land except on Pribilof Islands.

During their migration the seals never land upon the coast and no rookeries of fur seals are known to exist upon the North American continent or the islands adjacent thereto, except at the Pribilof Islands. Upon this point there is a unanimity of testimony, by scientists,[3] experts,[4] seal hunters of long experience,[5] traders,[6] and Indians along the coast and Aleutian chain of islands,[7] which precludes the possibility of the existence of rookeries other than those on the

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[1] A. B. Alexander, Vol. II, p. 355.

[2] *Ibid.*, Vol. II, p. 355.

[3] W. H. Dall, Vol. II, p. 23.

[4] H. H. McIntyre, Vol. II, p. 40; John Fratis, Vol. II, p. 107.

[5] Daniel Clausen, Vol. II, p. 412; Lutjens, Vol. II, p. 459; Andrew Laing, in British Blue Book, U. S. No. 3 (1892), p. 183.

[6] M. L. Washburne, Vol. II, p. 488.

[7] Chickinoff (Kadiak Island), Vol. II, p. 219; Paul Young (Kasan), Vol. II, p. 292; Billy Yeltachy (Howkan), Vol. II, p. 302; Schkatatin (Yakutat Bay), Vol. II, p. 243; Ntkla-ah (Chatham Sound), Vol. II, p. 288; Nechantake (Icy Bay to Wrangel), Vol. II, p. 241; George La Cheek (Sitka Bay), Vol. II, p. 265; Hoonah Dick (Cross Sound), Vol. II, p. 258; Eliah Prokopief (Attu Island), Vol. II. p. 215; Filaret Prokopief (Attu Island), Vol. II, p. 216; Samuel Kahoorof (Attu Island), Vol. II, p. 214; Chief Anna-tlas (Takou Inlet), Vol. II, p. 254; Metry Monin (Cook's Inlet), Vol. II, p. 226; Nicoli Gregaroff (Prince William Sound), Vol. II, p. 234; Hastings Yethnow (Kaswan), Vol. II, p. 303; George Ketwooschish (Southeastern Alaska), Vol. II, p. 251.

**Herd does not land except on Pribilof Islands.**

Pribilof Islands, or of the seals ever hauling out on the coast or neighboring islands; and Capt. Andersen, who has cruised seven years in Bering Sea, says the natives of Bristol Bay and St. Michael do not know what a fur-seal is.[1] Capt. Victor Jacobson, one of the best known sealers of Victoria, British Columbia, who has seen eleven years of seal hunting, and is the owner and master of the sealing schooner *Mary Ellen* and owner of the schooner *Minnie*, says: "I have never known a fur-seal to haul out upon any part of the coast of the United States, British Columbia, or Alaska. All parts of the coast have been visited by the seal hunters, and if seals hauled out any place it would have been known by the hunters."[2]

**Herd does not enter inland waters.**

This statement is made still stronger by the fact that the seals do not enter the inland waters of the coast during their migration, remaining always in the open sea or at the mouths of large bays, inlets, and gulfs.[3] Father Francis Verbeke, Roman Catholic priest at Barclay Sound, says that he has never seen or heard of fur-seals inside of Barclay Sound; they are all found out-

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[1] Vol. II, p. 205.

[2] Vol. II, p. 329.

[3] John Margathe, Vol. II, p. 308; Billy Nahoo, Vol. II, p. 252; Konkonal, Vol. II, p. 251; Albert Keetnuck, Vol. II, p. 250.

Herd does not enter inland waters.

side.[1] Rev. William Duncan, for thirty years a missionary among the Vancouver Indians, and whose successful labors in civilizing and Christianizing the Indians is well known in Canada and the United States, states that he has never heard of fur seal hauling upon the coast of British Columbia or Alaska, or anywhere save on the Pribilof Islands.[2] Shucklean, an old Indian of Killisnoo, Chatham Sound, states that the seals do not frequent those waters, and he never saw a man who had seen a seal pup.[3] Kah-chuck-tee, the old chief of the Huchenoo Indians, states that he has visited all the inlets and islands in Chatham Sound and other parts of Alaska as far as Sitka and never saw a fur seal in the inland waters, and adds he would have heard of seal hauling upon the islands or mainland of Alaska from the Indians, who traded with his tribe for herring oil, if such a thing had occurred, but he had never heard such a report.[4] Ruth Burdukofski, a native of Unalaska Island, states that "no old seals ever haul out in this vicinity," but that in the fall pups sometimes come on shore after a heavy blow from the

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[1] Vol. II, p. 311. See also Dick or Ehenshesut, Vol. II, p. 306; Clat-ka-koi, Vol. II, p. 305.

[2] Vol. II, p. 279.

[3] Shucklean, Vol. II, p. 253. See also Kesth Riley, Vol. II, p. 252; Toodays Charlie, Vol. II, p. 249.

[4] Kah-chuck-tee, Vol. II, p. 248.

Herd does not enter inland waters.

north; these he believes to have been separated from their mothers, and seek shelter and rest from the storm on the island.[1] Pud Zaotchnoi, one of the Aleut chiefs at Atka Island (near the center of the Aleutian chain), says that fur-seals never rest on the shores in that region.[2] It has been supposed that the fur-seals which formerly frequented the Guadalupe Islands and the coast of Southern California were a portion of the Pribilof Islands herd which remained south to breed; a recent examination of specimens by Dr. Allen, Dr. Merriam, and Mr. Theodore Gill, all naturalists of repute, has proven that the Guadalupe Island fur-seal belongs to a species of the genus *Arctocephalus*, which is entirely distinct from the *Callorhinus ursinus*, and have united in a paper to that effect.[3] It is therefore certain that the Pribilof herd do not breed or land at any other point except the Pribilof Islands.

The Russian herd.

The Russian seal herd on leaving the Commander Islands instead of turning eastward, like the Alaskan herd, turns westward,[4] entering the

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[1] Ruth Burdukofski, Vol. II, p. 206. See also Paul Repin, Vol. II. p. 207; S. Melovedoff, Vol. II, p. 209, and David Salamatoff, Vol. II, p. 209; Ivan Krukoff, Vol. II, p. 209.

[2] Vol. II, p. 213. See also Kassian Gorloi, Vol. II, p. 213.

[3] Article by Dr. Allen, Part III, Vol. I, p. 406; Statement by Dr. Allen, Dr. Merriam, and Mr. Theodore Gill, Vol. I, p. 586. See also Isaac Liebes, Vol. II, p. 455.

[4] Charles J. Hague, Vol. II, p. 207.

The Russian herd.

Sea of Okhotsk, where they are often found by whalers in the early spring,[1] and also range along the Japan coasts.[2] This shows the similarity of habits of these two herds, but at the same time is further evidence that they never intermingle.

## MANAGEMENT OF THE SEAL ROOKERIES.

### RUSSIAN MANAGEMENT.

After the discovery of the Pribilof Islands several Russian fur companies sent expeditions thither for the purpose of procuring seal skins and annually great numbers were taken. When the Russian American Company came into possession of these valuable rookeries in 1799, the unlimited slaughter ceased and a limitation was placed upon the number to be taken. Becoming more familiar with the condition and habits of the animals, especially their habit of polygamy, a further limitation was enforced providing that male seals alone should be killed, but no limitation was fixed as to the age of such males, the skins being procured from bulls, bachelors, and grey pups alike, the demands of the Chinese market being the principal guide as to the class taken. Toward the close of the Russian occupation, however, the taking of grey pups was practically stopped, except for food and seal oil, and the bachelor seals supplied nearly all the skins taken on the islands.[1] Under the general protective system adopted by Russia for seal life and the restrictions added from time to time, the seal herd continued to increase[2] until the Managers of the Russian American Company considered it possible and expedient to take seventy-thousand skins from St. Paul Island without danger of depleting the seal population.[3] The Aleuts, who had been brought to the islands when the Company first came into possession of the rookeries, had through generations of experience become expert in the handling and taking of seals and discriminating between the killable and non-killable classes; so that the annual quota of skins was procured with the least possible waste of life and disturbance of the breeding seals.

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[1] Charles Bryant, Vol. II, p. 4.

[2] Report of American Bering Sea Commissioners, *post*, p. 323.

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[1] Letter from Board of Administration of Russian American Company to Chief Manager Voyevodsky, dated April 24, 1854, Vol. I, p. 82.

[2] Letter from the Chief Manager to the Board of Administration of the Russian American Company, dated January 13, 1859; Vol. I, p. 86; also same to same, dated October 7, 1857, Vol. I, p. 84.

[3] Letter from the Chief Manager of the Russian American Colonies to Mr. Milovidof, Manager of St. Paul Island, dated May 1, 1864, Vol. I, p. 89.

### THE SLAUGHTER OF 1868.

When the United States came into possession of these Islands by the cession of 1867, it was impossible immediately to formulate an administrative system for all portions of the territory then so little known and so distant from the seat of government. The year 1868 was one of interregnum at the Pribilof Islands. Prof. W. H. Dall visited them that year, and briefly describes the state of affairs there existing. He says: "During my visit to St. George Island in 1868 this vast territory of Alaska had just fallen into the possession of the United States, and the Government had not yet fairly established more than the beginning of an organization for its management as a whole, without mentioning such details as the Pribilof Islands. In consequence of this state of affairs, private enterprise in the form of companies dealing in furs had established numerous sealing stations on the islands during 1868. During my stay, except on a single occasion, the driving from the hauling grounds, the killing and skinning, was done by the natives in the same manner as when under the Russian rule, each competing party paying them so much per skin for their labor in taking them. Despite the very bitter and more or less unscrupulous competition among the various parties, all recognized the importance of preserving the industry and protecting the breeding grounds from molestation and for the most part were guided by this conviction."[1] There being, however, no limitations as to numbers, about two hundred and forty thousand bachelor[2] seals' skins were taken that year from the Pribilof Islands.[3] The same year the United States Government had sent an agent to these islands, who unfortunately was delayed and compelled to winter at Sitka.[4]

### AMERICAN MANAGEMENT.

The following spring (1869) the Government agent, Dr. H. H. McIntyre, and a revenue vessel, under command of Capt. John B. Henriques,[4] reached the islands, and immediately took precautions to protect the seal herd from molestation; especial care being taken to prevent the breeding seal from being disturbed. The dogs on the islands were killed, and the firearms of the natives were taken possession of by the Government officials, in order that neither might terrify the occupants of the rookeries.[5] After these precautions the United States took up the consideration of the most advantageous manner of working the seal industry.

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[1] Vol. II, p. 23.
[2] George R. Adams, Vol. II, p. 157.
[3] T. F. Morgan, Vol. II, p. 63.
[4] H. H. McIntyre, Vol. II, p. 47.
[5] J. A. Henriques, Vol. II, p. 31; Charles Bryant, Vol. II, p. 8.

The lease of 1870.

Various recommendations and suggestions were made to the Congress of the United States in relation to this matter, but after a thorough and careful examination of the various methods proposed the most expedient was found to be the leasing of the islands to a single, reliable company, under the immediate supervision and control of agents of the United States Treasury Department duly appointed for that purpose. Pursuant to such investigation and conclusion, the Congress of the United States on July 1, 1870, passed an act accordingly,[1] and in August, 1870, Mr. Boutwell, Secretary of the Treasury, advertised for bids for the lease of the "seal fisheries" for twenty years. Of fourteen bids[2] offered by different companies and associations, that of the Alaska Commercial Company, with a capital of $2,000,000, was accepted by the Treasury as the one best fitted to promote "the interests of the Government, the native inhabitants, the parties heretofore engaged in the trade, and the protection of the seal fisheries," as required by the act of July 1, 1870.[3] The method

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[1] U. S. Stats. at Large, Vol. XVI, c. 189.

[2] H. R. Doc. No. 108, Forty-first Congress, pp. 5-9.

H. R. Doc. No. 108, Forty-first Congress, pp. 19, 20.

Terms of lease.

of managing the rookeries thus established allowed the lessees to take one hundred thousand male seals over one year old during the months of June, July, September, and October of each year, prohibiting the use of firearms or other methods tending to drive away the seals from the islands and the killing of seals in the water. In consideration for the skins thus obtained the lessees covenanted to pay to the Treasury of the United States annually fifty-five thousand dollars as rental of said islands, a revenue tax or duty of two dollars upon each fur-seal skin taken and shipped by them, and the further sum of sixty-two and one-half cents for each fur-seal skin taken; also to furnish, free of charge, the inhabitants of the islands of St. Paul and St. George annually twenty-five thousand dried salmon, sixty cords firewood, a sufficient quantity of salt and preserved meat; also to maintain a school on each island for at least eight months in each year, and not to sell any distilled spirits or spirituous liquors on said islands.[1] The lease thus granted was more advantageous to the Government of the United States and the inhabitants of the Pribilof Islands than the terms of leasing provided for in the act

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[1] Lease to Alaska Commercial Company, Vol. I, p. 104.

Terms of lease.

of July 1, 1870,[1] and far more favorable than the lease of the Commander and Robben islands granted by the Russian Government to the same company in 1871.[2]

Amendment of 1874.

On the 24th of March, 1874, an act amendatory of the act of July 1, 1870, was passed by Congress, by which the Secretary of the Treasury was given authority to designate the months in which seals might be taken on the islands and the number to be taken thereon;[3] thus placing the immediate control of the killing in the hands of the Government officials, with power to modify and reduce the quota allowed, at any time when it was deemed necessary for the protection of seal life upon the islands. It is evident, therefore, that the United States has taken the greatest precautions to limit the number killed in such a way as to preserve the seal herd from depletion.

Investigation of 1876.

The origin and practical workings of the lease of 1870 were made the subject of an elaborate investigation in 1876 by the Committee of Ways and Means of the Forty-fourth Congress, who reported that in their opinion the terms of the lease were highly favorable to the Government and

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[1] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 8.

[2] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 7.

[3] U. S. Stats. at Large, Vol. XVII, c. 64, p. 24.

Investigation of 1876.

all parties concerned; and that "the contract as made was the best disposition of this interest that could have been made, for it is certain that it has resulted in the receipt of a very large revenue to the Treasury and in an amelioration of the physical and moral condition of the natives."[1]

Investigation of 1888.

In a subsequent investigation in 1888, by the Committee on Merchant Marine and Fisheries of the Fiftieth Congress the same conclusion was reached, the report stating:

"That the Alaska Commercial Company has fully performed its contract with the Government and has contributed largely to the support, maintenance, comfort, and civilization of the inhabitants, not only of the seal islands, but also to those of the Aleutian Islands, Kadiak, and the mainland."[2]

Methods of management.

Both the above-mentioned committees also took into consideration the method of administering the seal rookeries as established by the act of July 1, 1870. One of the three following means must of necessity have been adopted for the management of the islands, viz, (1) leasing to a company; (2) making the rookeries free to the public; or (3) the Government itself working the rookeries.

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[1] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 12.

[2] H. R. No. 3883, Fiftieth Congress, second session, p. xxiii.

Unlicensed working impracticable.

The second course would concededly have resulted in the extermination of the Alaska seal herd in a very short time,[1] as it has in all cases where seal killing has been general and unlimited.[2]

Working by Government impracticable.

The third method, direct management by the Government, was also deemed impracticable to the committees who investigated the question. The committee of Congress in 1876 reported that in their judgment the Government could not advantageously assume charge itself of the seal industry and did wisely to intrust it to the Alaska Commercial Company.[3] The committee of Congress which made a thorough examination of the question in 1888 reported: "All these witnesses (those examined by the committee) concur in testifying to the wisdom of the existing law on the subject, and favor the retention of the present system. All other existing rookeries are managed substantially in the same way by the different Governments to which they belong, all following the lead of Russia, who managed and protected our rookeries by a similar method from their discovery until their transfer to the United

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[1] Senate Doc. No. 48, Forty-fourth Congress, first session, p. 4.

[2] *Post*, p. 218.

[3] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 12.

Working by Government impracticable.

States. It did not require the testimony of witnesses to convince the committee that the Government itself could not successfully manage this business."[1] It is evident from the nature of the industry that in case the sealing on the islands should be managed directly by the Government the opportunities for fraud and theft are very great on the part of the agents, who under the act of 1870 are prohibited from being in anyway connected or interested in the industry; as it is now the lessees and agents are restraints upon each other. Further, the business requires expert knowledge of seal habits, the market, and the transactions pertaining to the sale of the skins, necessitating the presence of agents, not only on the islands, but in San Francisco and London, who are thoroughly conversant with these points. Immediate Government management is at once seen to be impracticable under these circumstances and the present method employed to be the only feasible one.

Workings of the lease of 1870.

The careful investigations made by the Congressional committees showed that the Alaska Commercial Company had fulfilled the terms of the lease in all respects according to the require-

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[1] Report No. 3883, House of Representatives, Fiftieth Congress, second session, p. xxiii.

**Workings of the lease of 1870.**

ments of the Act of 1870;[1] that in compliance with the terms of the lease (many of which are not contained in the Act of 1870) the lessees furnished the inhabitants of the islands with a large number of commodious dwellings, without charging rent, and making free repairs;[2] built them two free schools;[3] kept stores at which goods were sold at low prices;[4] supplied them with free provisions, medicines, and medical attendance;[5] established and maintained for them a savings bank, with a total of over forty thousand dollars of deposits,[6] and prohibited the sale of intoxicating liquors on the islands.[7]

## CONDITION OF THE NATIVES.

The improvement in the condition of the natives of the Pribilof Islands is one of the marked features of the benefit which has resulted from the management of these islands under the system adopted in 1870 by the Congress of the United States.

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[1] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 11; Report No. 3883, House of Representatives, Fiftieth Congress, second session, p. xxiii.

[2] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 30; Report No. 3883, House of Representatives, Fiftieth Congress, second session, pp. 31, 32.

[3] Report No. 623, House of Representatives, Forty-fourth Congress, first session, pp. 30, 33; Report 3883, House of Representatives, Fiftieth Congress, second session, p. 31.

[4] Report No. 623, House of Representatives, Forty-fourth Congress, first session, p. 30, No. 3883, House of Representatives, Fiftieth Congress, second session, p. 32.

[5] Same Report, p. 30.

[6] ,, ,, p. 31.

[7] ,, ,, p. 32.

Under the Russian Company.

When the United States Government assumed control of the territory of Alaska the condition of these natives was wretched in the extreme, the Russian American Company having neglected their welfare and forced them into practical slavery. Capt. Bryant, who had an opportunity to observe their condition prior to active occupation of the islands by the United States, describes and compares the situation of the natives under Russian management and under the system inaugurated by the United States. His testimony on this point is as follows:

"When I first visited the seal islands, in 1869, the natives were living in semisubterranean houses built of turf and such pieces of driftwood and whalebones as they were able to secure on the beach. Their food had been prior to that time insufficient in variety and was comprised of seal meat and a few other articles furnished in meager quantity by the Russian Fur Company. They had no fuel and depended for heat upon the crowding together in their turf houses, sleeping in the dried grasses secured upon the islands.

"Forced to live under these conditions, they

Under the Russian Company.

could not of course make progress towards civilization. There were no facilities for transporting skins; they were carried on the backs of the natives, entailing great labor and hardship.

Under American control.

"Very soon after the islands came into the possession of the American Government all this was changed. Their underground earthen lodges were replaced by warm, comfortable wooden cottages for each family;[1] fuel, food, and clothing were furnished them at prices twenty-five per cent above the wholesale price of San Francisco; churches were built and schoolhouses maintained for their benefit, and everything done that would insure their constant advancement in the way of civilization and natural progress. Instead of being mere creatures of the whims of their rulers they were placed on an equal footing with white men and received by law a stipulated sum for each skin taken, so that about forty thousand dollars was annually divided among the inhabitants of the two islands. In place of the skin-clad natives living in turf lodges, which I found on arriving on the island in 1869, I left them in 1877 as well fed, as well clothed, and as well

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[1] See photograph, Vol. II, p. 95, showing Village of St. Paul in 1870 and in 1891; and photographs of natives, Vol. II, pp. 8, 70, 133. Letter from Chief Manager Furuhelm to the Board of Administration of the Russian American Company, dated July 16, 1863; Vol. I, p. 88.

Under American control.

housed as the people of some of our New England villages. They had school facilities, and on Sunday they went to service in their pretty Greek church, with its tastefully arranged interior; they wore the clothing of civilized men and had polish on their boots. All these results are directly traceable to the seal fisheries and their improved management."[1]

Improvement.

In this comparison of condition and in the marked improvement following the American occupation, Dr. H. H. McIntyre also gives a graphic account, which is substantially the same as the one above quoted.[2] Mr. Samuel Falconer who reached the islands in 1870, and remained until 1877, gives an account of the condition in which he found the natives and the great change which took place while he was located at the islands. He says: "When I came there they were partially dressed in skins, living in filthy, unwholesome turf huts, which were heated by fires with blubber as fuel; they were ignorant and extremely dirty. When I left they had exchanged their skin garments for well-made, warm woolen clothes; they lived in substantial frame houses heated by coal stoves; they had become cleanly, and the children were attending school eight

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[1] Vol. II, p. 8.
[2] Vol. II, p. 599.

Improvement.

months of the year.[1] They were then as well off as well-to-do workingmen in the United States, but received much larger wages. No man was compelled to work, but received pay through his chief for the work accomplished by him. A native could at any time leave the islands, but their easy life and love for their home detained them. When I first went there (1870) the women did a good share of manual labor, but when I came away (1877) the hard work was done by the men. I do not recall a single instance in history where there has been such a marked change for the better by any people in such a short time as there has been in the Pribilof Islanders since the United States Government took control of these islands."[2] Evidence might be multiplied on this point, but the foregoing testimony of eye-witnesses of the relative conditions of the natives under the Russian Company and again under that of the American Government is sufficient to show that the management of the Pribilof Islands by the United States has raised the inhabitants in a few years from a state of ignorance, wretchedness, and semibarbarism, which seventy years of the Russian Company's occupation had failed to alleviate, to a condition of liberty and civilization, which Europe and America need not feel ashamed to find among their citizens.*

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[1] See photograph of School, Vol. II, pp. 9, 163.

[2] Vol. II, p. 162.

Improvement.

Government agents.

The civil government of the islands is provided for by sections 1973–1976 of the Revised Statutes of the United States,[1] under which the agent and his assistants are practically the governors of the islands. They have the entire control of the natives, protect them from the impositions of the lessees' agents, if such are attempted, and see that the supplies required by law for their sustenance are provided. The handling of the seals on the islands, being entirely done by the natives, is directly under the supervision of the Government agents.

Lease of 1890.

With the expiration of the Alaska Commercial Company's lease the United States Treasury Department again advertised for and received ten formal bids, which were carefully considered, and in 1890 the Government leased the seal islands for another period of twenty years to the present lessees, the North American Commercial Company, which was decided to be the most advantageous bidder for the Government.

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*N.B.—It should be observed that the affidavits of natives on the Pribilof Islands are signed by them, and that they have not simply "made their cross," as would be the method employed by many citizens of the civilized nations of the world.

[1] Vol. I, p. 98.

Comparison of leases.

An examination of the lease now in force will show that it is not only more favorable to the Government, but also to the inhabitants of the islands than the former lease[1] in the following respects: (1) The rental is \$60,000 instead of \$55,000; (2) the tax per skin is \$9.62½, instead of \$2.62½; (3) 80 tons of coal are to be furnished the natives, instead of 60 cords of wood; (4) the quantity of salmon, salt, and other provisions to be furnished to them can be fixed by the Secretary of the Treasury; (5) the company is to furnish to the natives free dwellings, a church, physicians, medicines, employment, and care for the sick, aged, widows, and children; (6) instead of 100,000 seals per year, the company can take only 60,000 during the first year of the lease, and thereafter the catch is to be subject to the regulations of the Secretary of the Treasury. Under this lease it is difficult to see how the United States could have a more complete control over the seal industry on the islands, even if it took the entire management of the business. Leasing under such terms gives the Government absolute power in fixing the quota according to the condition of the herd, and at the same time avoids the details of management and disposing of the skins, which are the especial difficulties in the way of the United States working the rookeries itself. The course thus adopted by the United States seems as free from criticism or improvement as any that can be suggested.[1]

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[1] Lease to North American Commercial Company; Vol. I, p. 106.

Comparison of leases.

## THE SEALS.

Having reviewed the general management of the Pribilof Islands as it pertains to the United States Government and the native islanders, the next point for consideration is the management of the seal herd, the methods employed in taking the seals, and the results of these practices upon the number and condition of the herd.

Control and domestication.

The peculiar nature and fixed habits of the seal make it an animal most easy of control and management. A herd of seals is as capable of being driven, separated, and counted as a herd of cattle on the plains.[2] In fact, they much resemble these latter in the timidity of the females and the ferocity of the males. One example of the ease with which they can be controlled is mentioned by Mr. Falconer, who speaks of a herd of three thousand bachelor seals being left in charge of a boy after they

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[1] See favorable criticism of the methods employed in "Handbook of the Fishes of New Zealand," page 235.

[2] H. N. Clark, Vol. II, p. 159; "Handbook of the Fishes of New Zealand," page 235.

Control and domestication.

had been driven a short distance from the hauling grounds.[1] Mr. Henry N. Clark, who was for six years (1884–1889) in the employ of the Alaska Commercial Company and in charge of the "sealing gang" on St. George Island, and who is therefore especially competent to speak of the possibilities of driving and handling the seals, says: "I was reared on a farm and have been familiar from boyhood with the breeding of domestic animals, and particularly with the rearing and management of young animals, hence the comparison of the young seals with the young of our common domestic species is most natural. From my experience with both I am able to declare positively that it is easier to manage and handle young seals than calves or lambs.[2] Large numbers of the former are customarily driven up in the fall by the natives to kill a certain number for food, and all could be 'rounded up' as the prairie cattle are if there was any need for doing so.[3] All the herd so driven are lifted up one by one and examined as to sex, and while in this position each could be branded or marked if necessary. If the seal rookeries were my personal property I should regard the task of branding all the young as no more difficult or onerous than the branding of all my calves if I were engaged in breeding cattle upon the prairies."[1] The foregoing statement as to the possibility of branding the young seals, is supported by others equally experienced in seal life in the islands.[2] Dr. McIntyre, so long experienced in the handling of seals, says that "they are as controllable and amenable to good management upon the islands as sheep and cattle,"[3] and several other witnesses make like affirmations.[4] Chief Anton Melovedoff, already mentioned, states that "it is usually supposed that seals are like wild animals. That is not so. They are used to the natives and will not run from them. The little pups will come to them, and even in the fall, when they are older, we can take them up in our hands and see whether they are males or females. We can drive the seals about in little or large bands just as we want them to go, and they are easy to manage."[5]

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[1] Vol. II, p. 162. See also J. C. Redpath, Vol. II, p. 152.

[2] See also John Fratis, Vol. II, p. 109.

[3] See also Watson C. Allis, Vol. II, p. 98.

Control and domestication.

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[1] Vol. II, p. 159.

[2] Charles Bryant, Vol. II, p. 5; S. M. Washburn, Vol. II, p. 156; H. V. Fletcher, Vol. II, p. 105; George H. Temple, Vol. II, p. 153.

[3] Vol. II, p. 53.

[4] J. M. Morton, Vol. II, p. 69; Leon Sloss, Vol. II, p. 91; H. V. Fletcher, Vol. II, p. 106; George H. Temple, Vol. II, 153; Gustave Niebaum, Vol. II, p. 77; John Armstrong, Vol. II, p. 2.

[5] Vol. II, p. 145.

Control and domestication.

Several other Pribilof islanders and white men long resident there make similar statements.[1]

This peculiar susceptibility to control has also been and is recognized by such a well-known scientist as Dr. E. von Middendorff, of Russia, who, in a letter dated May 6/18, 1892, says: "This animal is of commercial importance and was created for a domestic animal, as I pointed out many years ago. (See my 'Siberian Journey,' Vol. IV, Part I, p. 846.) It is, in fact, the most useful of all domestic animals, since it requires no care and no expense and consequently yields the largest net profit."[2]

Regulations for killing.

This power of domestication has made it possible to discriminate most carefully between the classes of seals killed and to enforce rules and regulations for the general management of the herd. Rear-Admiral Sir M. Culver Seymour, in a dispatch to the British Admiralty, says: "The seals killed by the Alaska Commercial Company are all clubbed on land, where the difference of sex can easily be seen."[3]

Protection of females.

The first regulation enforced by the Government of the United States was that no female

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[1] John Fratis, Vol. II, p. 109; Daniel Webster, Vol. II, p. 182; J. C. Redpath, Vol. II, p. 152; Simeon Melovedoff, Vol. II, p. 147.

[2] Letter of Dr. E. von Middendorff, Vol. I, p. 431.

[3] British Blue Book, U. S. No. 2 (1890), C–6131, p. 4.

Protection of females.

seals should be killed.[1] Capt. Moulton, for eight years assistant Treasury agent on the islands, says: "No female is ever killed, and it is very seldom a female is driven."[2] Samuel Falconer, assistant Treasury agent on the islands from 1870 to 1876, states that not more than two female seals a season were driven on St. George Island, and that he believed those were barren cows which had hauled up with the bachelors.[3] If a female seal was killed either intentionally or accidentally, the employé was fined.[4] This regulation preserves the producing sex, is not only observed by the native sealers on the Pribilof Islands, but the need of strictly conforming thereto is fully realized as a means of preservation of the species. Karp Buterin, the chief of the natives on St. Paul Island, who was born on the islands, and is the most intelligent of the natives,[5] says: "I know, and we all know, if we kill cows the seals soon die out and we would have no meat to eat: and if anyone told me to kill cows I would say no! If I or any of my people knew of anyone killing a cow, we would go and tell the

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[1] Louis Kimmel, Vol. II, p. 173; George Wardman, Vol. II, p. 178; H. G. Otis, Vol. II, p. 86; Anton Melovedoff, Vol. II, p. 142.

[2] Vol. II, p. 72; Daniel Webster, Vol. II, p. 181.
J. C. Redpath, Vol. II, p. 149.

[3] Vol. II, p. 162.

[4] Anton Melovedoff, Vol. II, p. 139.

[5] Milton Barnes, Vol. II, p. 102.

Protection of females.

Government officer."[1] And Mr. C. L. Fowler, who has been employed on the islands since 1879, says that nothing offends the natives quicker than to have a female killed.[2] With the coöperation of the natives, who alone do the driving and killing, violation of this regulation is impossible. Another evidence of the strictness with which this rule is enforced is the testimony of furriers to the fact that the skins of female seals are never seen among those taken on the Pribilof Islands.[3]

The killable class.

The class of seals allowed to be killed are the nonbreeding males from one to five years of age which "haul out upon the hauling grounds remote from the breeding grounds."[4] The handling of this class of seals because of their separation from the "breeders" causes the least possible disturbance to the seals on the breeding grounds.[5]

Disturbance of breeding seals.

Besides this the most stringent rules have been and are enforced by the Government to prevent any disturbance of the breeding seals.[6] Capt. W. C. Coulson, of the United States

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[1] Vol. II, p. 103.

[2] Vol. II, p. 25.

[3] G. C. Lampson, Vol. II, p. 565. See also favorable comment on the wisdom of this regulation in "Handbook of the Fisheries of New Zealand," p. 236.

[4] J. Stanley Brown, Vol. II, p. 16; T. F. Morgan, Vol. II, p. 62.

[5] J. Stanley Brown, Vol. II, p. 16; Daniel Webster, Vol. II, p. 183.

[6] Charles Bryant, Vol. II, p. 8; S. N. Buynitsky, Vol. II, p. 22.

Disturbance of breeding seals.

Revenue Marine Service, who visited the islands in 1890 and 1891, says: "All firearms were forbidden and never have been used on these islands in the killing and taking of seals; in fact, unusual noise, even on the ships at anchor near these islands, is avoided. Visiting the rookeries is not permitted only on certain conditions, and anything that might frighten the seals is avoided. The seals are never killed in or near the rookeries, but are driven a short distance inland to grounds especially set apart for this work. I do not see how it is possible to conduct the sealing process with greater care or judgment."[1] Firearms are not permitted to be used on the islands from the time the first seal lands until the close of the season.[2]

Number killed.

The number of seals allowed to be killed annually by the lessees was, from 1871 to 1889 inclusive, one hundred thousand,[3] but this number is variable and entirely within the control of the Treasury Department of the United States.[4] In 1889 Charles J. Goff, then the Government agent on the islands, reported to the Department that he considered it necessary to reduce the

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[1] Vol. II, p. 414.

[2] J. C. Redpath, Vol. II, p. 150.

[3] J. Stanley Brown, Vol. II, p. 18; H. G. Otis, Vol. II, p. 85.

[4] J. Stanley Brown, Vol. II, p. 16.

Number killed.

quota of skins to be taken in 1890.[1] The Government at once reduced the number to sixty thousand and ordered the killing of seals to cease on July 20.[1] The 20th of July was fixed upon because in former years the taking of seals had practically ceased at that time, the breeding grounds and hauling grounds being up to that time entirely distinct and separate, and because during the period from June 1 to July 20 the skins were in the most marketable condition.[2] The killing of a portion of the surplus male life is undoubtedly a benefit to the herd, as it is with other domestic and polygamous animals. For it has always been found that such an act increases the number of the progeny.[3] The American Commissioners also demonstrate by the diagrams attached to their report, which are explained in the body of the document, that a large portion of the young male seals can be killed without reducing or affecting the normal birth rate.[4] The United States Government formerly allowed the natives to kill a few thousand male pups for food, but such killing has been prohibited.[5]

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[1] Vol. II, p. 112.

[2] H. G. Otis, Vol. II, p. 86.

[3] Leon Sloss, Vol. II, p. 92; Gustave Niebaum, Vol. II, p. 77; J. C. Redpath, Vol. II, p. 152.

[4] Report of American Bering Sea Commissioners, *post*, p. 356.

[5] J. Stanley Brown, Vol. II, p. 18; see Regulations, Vol. I, p. 103.

Manner of taking.

The manner of taking seals on the islands is conducted with the greatest care and precautions[1] and is directly under the supervision of the Government agents.[2] The methods employed have been the same for twenty years,[3] without variation,[4] and it is the universal testimony of all acquainted with the methods employed that they can not be improved upon.[5] The natives, who are the only persons who ever drive or handle the seals,[6] start out between 2 and 6 o'clock in the morning when the weather is cool and there is the least liability of overheating the seals;[7] separating a small herd of bachelors from those occupying a hauling ground they drive them inland.[8] A hauling ground after a drive is given several days of rest and as a seal let go from the killing grounds always returns to the same hauling grounds, it has plenty of time to recuperate before being driven again.[9]

Driving.

The herd is then driven as slowly as possible while still keeping the animals in motion.[7] Ag-

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[1] Charles Bryant, Vol. II, p. 8; M. C. Erskine, Vol. II, p. 422: W. C. Coulson, Vol. II, p. 414.

[2] B. F. Scribner, Vol. II, p. 89; J. H. Moulton, Vol. II, p. 72.

[3] W. S. Hereford, Vol. II, p. 36.

[4] H. H. McIntyre, Vol. II, p. 45.

[5] S. Falconer, Vol. II, p. 161.

[6] W. C. Coulson, Vol. II, p. 414; Samuel Falconer, Vol. II, p. 161: Simeon Melavidoff, Vol. II, p. 209.

[7] W. B. Taylor, Vol. II, p. 176.

[8] S. N. Buynitsky, Vol. II, p. 21.

[9] Daniel Webster, Vol. II, p. 182.

Driving.

gie Kushin, native priest on St. Paul Island, says: "The seals are never driven at a greater speed than one mile in three hours; and the men who do the driving have to relieve each other on the road because they travel so slow they get very cold."[1] Other native seal drivers and officals on the islands also speak of the slowness of the driving.[2] At suitable intervals the herd is halted and seals of the unmarketable age are allowed to separate themselves from the rest and return to the water.[3] The greatest care has always been taken not to overheat the animals during a "drive," because the effect is very injurious.[4] Louis Kimmel, assistant Treasury agent in 1882 and 1883, says: "In every case of a seal being killed on the 'drive' I, as Government agent, imposed a fine in order that they might be more careful in the future."[5] Frequent stops are made to allow the seals to rest and cool off.[6] A drive is never undertaken while the sun is shining,[7] and if the sun unexpectedly comes out the drive is immediately aban-

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[1] Vol. II, p. 129.

[2] J. C. Redpath, Vol. II, p. 150.

[3] Charles Bryant, Vol. II, p. 8.

[4] Samuel Falconer, Vol. II, p. 162; J. H. Moulton, Vol. II, p. 72.

[5] Vol. II, p. 173.

[6] J. H. Moulton, Vol. II, p. 72.

[7] J. H. Moulton, Vol. II, p. 72; A. P. Loud, Vol. II, p. 38; John Fratis, Vol. II, p. 107; Watson C. Allis, Vol. II, p. 97.

Driving.

doned and the seals allowed to return to the water.[1] The natives understand how much fatigue can be endured by the seals and the kind of weather suitable for "driving,"[2] therefore the number of seals killed by overdriving or by smothering was very inconsiderable at all times.[3] J. C. Redpath, who has since 1875 been one of the lessees' agents on the islands, says: "As the regulations require the lessees to pay for every skin taken from seals killed by the orders of their local agents, and as the skin of an overheated seal is valueless, it is only reasonable to suppose that they would be the last men living to encourage or allow their employés to overdrive or in any manner injure the seals."[4] Mr. Wardman says: "Seals are rarely killed by overdriving."[5] Mr. Buynitsky says he never saw a single seal killed by overdriving,[6] and Capt. Moulton states that "a very few seals die during a 'drive,' amounting to a very small fraction of one per cent. of those driven. And in nine cases out of ten of those accidentally killed by smothering, the skins

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[1] Samuel Falconer, Vol. II, p. 162; J. H. Moulton, Vol. II, p. 72; B. F. Scribner, Vol. II, p. 90; John Fratis, Vol. II, p. 107.

[2] W. C. Coulson, Vol. II, p. 414.

[3] H. H. McIntyre, Vol. II, p. 45.

[4] Vol. II, p. 150.

[5] Vol. II, p. 178.

[6] Vol. II, p. 21.

Driving.

are saved.[1] The same statement as to the removal of the skins is stated by others, the skins being counted in the quota allowed to the lessees.[2] In fact it may be questioned whether any seals are ever killed on a "drive," except now and then one by smothering.[3]

Overdriving and redriving.

The effects of overdriving and redriving (that is, the repeated driving of the same animal several times during the season) upon the seals which from age or condition are unfit for killing, is of little or no importance in relation to seal life on the islands. After a "drive" the hauling ground is unmolested for several days and the seals let go from the killing grounds, returning to the same hauling grounds as is their habit, have, therefore, several days to rest and recuperate before undergoing whatever extra exertion is connected with being driven.[4] Certainly no male seal thus driven was ever seriously injured or his virility affected by such redriving.[5] Mr. John Armstrong, who from 1877 to 1886 was the lessees' agent on St. Paul Island, says: "The driving gave them, with rare exceptions, very

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[1] Vol. II, p. 72. See also A. P. Loud, Vol. II, p. 38.

[2] George Wardman, Vol. II, p. 178; Samuel Falconer, Vol. II, p. 162; John Fratis, Vol. II, p. 107.

[3] John Fratis, Vol. II, p. 107.

[4] Daniel Webster, Vol. II, p. 182.

[5] A. P. Loud, Vol. II, p. 38; Charles Bryant, Vol. II, p. 8; George Wardman, Vol. II, p. 179; Daniel Webster, Vol. II, p. 182.

Overdriving and redriving.

little more exercise than they appeared to take when left to themselves."[1] Anton Melovedoff, an educated native of St. Paul Island, and for seven years First Chief on the Island, after stating the fact that before the American occupation the seals were driven sometimes twelve and one-half miles, says, "No one ever said in those days that seals were made impotent by driving, although long drives had been made for at least fifty years."[2] Mr. Samuel Falconer, in speaking of this question of redriving, says: "When we consider that the bulls, while battling on the rookeries to maintain their positions, cut great gashes in the flesh of their necks and bodies, are covered with gaping wounds, lose great quantities of blood, fast on the islands for three or four months, and then leave the islands, lean and covered with scars, to return the following season fat, healthy, and full of vigor to go through again the same mutilation, and repeating this year after year, the idea that driving or redriving, which can not possibly be as severe as their exertions during a combat, can effect such unequal vigor and virility is utterly preposterous and ridiculous."[3] Capt. Moulton, after eight years' experience on the

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[1] Vol. II, p. 1.
[2] Vol. II, p. 142.
[3] Vol. II, p. 162. See also Daniel Webster, Vol. II, p. 183.

Overdriving and redriving.

islands, states it as his opinion that even if a seal was driven twelve successive days for the average distance between a hauling ground and a killing ground, its virility would not be at all impaired.[1] Mr. Taylor says in relation to injury to the reproductive powers of the male seals "it would at once be noticeable, for the impotent bull would certainly haul up with the bachelors, having no inclination and vigor to maintain himself on the rookeries."[2] The same methods of driving are employed on the Commander Islands, and the rookeries are smaller, necessitating more redriving and the drive on Copper Island takes often a day going over a ridge seven hundred feet high; and yet this driving, so much more severe than on the Pribilof Islands, has been carried on for over fifty years and is sufficient evidence that redriving does not injure the reproductive force of the male seal.[3] All the drives on the Commander Islands are rougher and more severe than on the Pribilof Islands.[4] That this injury to the male portion of the herd has not occurred is evidenced by the testimony of many on the islands in later years,[5] and Mr. Redpath, resident

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[1] Vol. II, p. 72.

[2] Vol. II, p. 177.

[3] C. F. Emil Krebs, Vol. II, p. 196.

[4] N. B. Miller, Vol. II, p. 200.

[5] H. H. McIntyre, Vol. II, p. 45; J. Stanley Brown, Vol. II, p. 18; Daniel Webster, Vol. II, p. 182; J. C. Redpath, Vol. II, p. 151; C. L. Fowler, Vol. II, p. 25.

Over-driving and re-driving.

for seventeen years on the islands, adds: "The man is not alive who ever saw a six or seven year old bull impotent."[1] The killing grounds are located near the water, so that those seals whose skins are unmarketable can readily and with little exertion return to that element; they are also established as near the hauling grounds as is possible without having the odor from the carcasses disturb the breeding seals.[2] If it were not for this unavoidable cause of disturbance attendant upon the killing and skinning of the animals, driving in any form would not be necessary, but as it is, the killing must take place at some distance from the hauling and breeding grounds, which compels a certain amount of driving.

Improvement over Russian methods of taking.

The improvement over the Russian methods is marked in this particular, for in 1873[3] horses and mules were introduced by the lessees to transport the skins to the salt houses, previous to which time all this labor had been done by the natives, who were the sole beasts of burden on the islands;[4] and, therefore, the killing grounds were located much nearer to the hauling grounds than

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[1] Vol. II, p. 151.

[2] J. H. Moulton, Vol. II, p. 72; Daniel Webster, Vol. II, p. 182.

[3] Charles Bryant, Vol. II, p. 8.

[4] Letter from Chief Manager Furnhelm to the Board of Administration of the Russian American Company, dated July 16, 1863.

Improvement over Russian methods of taking.

before this means of transportation was provided.[1] Anton Melovedoff states that "in the Russian times, before 1868, the seals were always driven across the island of St. Paul from North East Point (the largest of the rookeries) to the village salt house, a distance of twelve and one-half miles, but when the Alaska Commercial Company leased the islands they stopped long driving and built salt houses near to the hauling grounds, so that by 1879 no seals were driven more than two miles."[2] Other natives who were on the islands under both American and Russian control also speak of the shortening of the drives by the American lessees.[3] Under these improvements the killing season was reduced from three or four months under the Russian occupation to thirty or forty days,[4] showing how much American management has facilitated the taking of seals and reduced the number of days of disturbance to the herd. Kerrick Artomanoff, a native born on St. Paul Island sixty-seven years ago, and who has driven seals for fifty years and was chief for seventeen years, says: "The methods used by the Alaska Commercial Company and the American Government for the care and preservation of the seals were much better than those used by the Russian Government."[1]

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[1] J. H. Moulton, Vol. II, p. 72; Charles Bryant, Vol. II, p. 9; H. H. McIntyre, Vol. II, p. 45.

[2] Vol. II, p. 142.

[3] Aggie Kushin, Vol. II, p. 129; Karp Buterin, Vol. II, p. 104; Daniel Webster, Vol. II, p. 182; J. C. Redpath, Vol. II, p. 150; Kerrick Artomanoff, Vol. II, p. 99.

J. Stanley Brown. Vol. II, p. 18.

Improvement over Russian methods of taking.

Killing.

When a "drive" arrives at the killing grounds the animals are allowed to rest and cool off; then they are divided into groups or "pods" of from twenty to thirty;[2] the killable seals are carefully selected, those of three and four years being preferred;[3] the killing gang then club those selected, allowing the remainder to return to the water.

Salting and kenching.

The skins are removed from the carcasses, counted by the Government agent, salted, and packed in "kenches" at the salt houses. The flesh of the seals is taken by the natives for food.[4]

Improvement in treating the skins

Under the Russian management many skins were lost through the drying process, and also from the glutted condition of the Chinese market, where the greatest number of the skins were disposed of by barter. Bishop Veniaminof says (Vol. I, p. 296) that "in 1803 eight hundred

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[1] Vol. II, p. 99.

[2] Daniel Webster, Vol. II, p. 182.

[3] H. H. McIntyre, Vol. II, p. 57; J. Stanley Brown, Vol. II, p. 16.

[4] Letter of Chief Manager Furnhelm to the Board of Administration of the Russian American Company, dated July 16, 1863, Vol. I, p. 88. A full account of the method of drying, salting and packing the skins is given by Dr. H. H. McIntyre, Vol. II p. 57.

Improvement in treating the skins.

thousand skins had accumulated, there being no profitable sale for them at Kiakhta (the Chinese market town), and besides a large proportion of the skins became spoiled, and more than seven hundred thousand were burned or thrown into the sea." But under American control all skins are salted, as will be seen by an examination of the London Trade Sales, and there is no waste.

Increase.

Under this careful management of the United States Government the seal herd on the Pribilof Islands increased in numbers, at least up to the year 1881. This increase was readily recognized by those located on the islands.[1] Capt. Bryant says that in 1877 the breeding seals had increased to such an extent that they spread out on the sand beaches, while in 1870 they had been confined to the shores covered with broken rocks.[2] Mr. Falconer mentions the fact that in 1871 passages or lanes were left by the bulls through the breeding grounds to the hauling grounds, which he observed to be entirely closed up by breeding seals in 1876,[3] and in this statement he is borne out by the testimony of Dr. McIntyre.[4] It must be remembered also in this connection that two

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[1] Gustave Niebaum, Vol. II, p. 77; H. W. McIntyre, Vol. II, p. 138; Daniel Webster, Vol. II, p. 181; J. C. Redpath, Vol. II, p. 151.

[2] Vol. II, p. 7.

[3] Vol. II, p. 161.

[4] Vol. II, p. 44.

Increase.

hundred and forty thousand male seals had been destroyed in 1868, and that this increase took place in spite of that slaughter and although one hundred thousand male seals were taken annually upon the islands.[1] How this increase could be recognized has been already mentioned in connection with the question of estimating the number of seals, and is best shown by the charts marked A to K,[2] which have been verified by those most familiar with seal life during that period (1870 to 1881).[3] That this increase in the seal herd was undoubtedly the result of the methods and management employed by the American Government is a fact asserted and clearly proved.[4]

## DECREASE OF THE ALASKAN SEAL HERD.

### EVIDENCE OF DECREASE.

Period of stagnation.

From the year 1880 to the year 1884-'85 the condition of the rookeries showed neither increase nor decrease in the number of seals on the islands.[5] In 1884, however, there was a

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[1] London Trade Sales, Vol. II, p. 585; tables of seals taken, Vol. II, pp. 127 and 172.

[2] See portfolio of maps and charts and explanatory affidavits of H. H. McIntyre, Vol. II, p. 30; Charles Bryant, Vol. II, p. 3; and J. Stanley Brown, Vol. II, p. 20.

[3] H. H. McIntyre, Vol. II, p. 44; Charles Bryant, Vol. II, p. 7; T. F. Morgan, Vol. II, p. 64; Samuel Falconer, Vol. II, p. 167.

[4] J. C. Cantwell, Vol. II, p. 408; H. G. Otis, Vol. II, p. 87.

[5] J. Stanley Brown, Vol. II, p. 18; J. H. Moulton, Vol. II, p. 71 H. A. Glidden, Vol. II, p. 109.

Period of stagnation.

perceptible decrease noticed in the seal herd at the islands,[1] and in 1884 the decrease was marked in the migrating herd as it passed up along the American coast, both by the Indian hunters along the coast[2] and by white seal hunters at sea.[3] Since that time the decrease has become more evident from year to year, both at the rookeries[4] and in the waters of the Pacific Ocean and Bering Sea.[5] The Bering Sea Commissioners of both Great Britain and the United States, in their joint report, affirm that a decrease has taken place in the number of the seal herd;[6] so that the simple fact is accepted by both parties to this controversy. But the time when the seals commenced decreasing, the extent of such decrease, and its cause are matters for consideration.

On Pribilof Islands.

The American Bering Sea Commissioners, after an exhaustive examination of the condition of the rookeries, as to the evidence of their former limits, and of individual witnesses who had observed the rookeries for several years,

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[1] J. H. Moulton, Vol. II, p. 71; M. C. Erskine, Vol. II, p. 422; Anton Melovedoff, Vol. II, p. 139.

[2] Alfred Irving, Vol. II, p. 387; Bowachup, Vol. II, p. 376; N. Gregaroff, Vol. II, p. 234.

[3] E. W. Littlejohn, Vol. II, p. 457; A. McLean, Vol. II, p. 437.

[4] J. H. Douglass, Vol. II, p. 419; M. C. Erskine, Vol. II, p. 422; N. Mandregin, Vol. II, p. 140.

[5] James Kennedy, Vol. II, p. 449; Charles Lutjens, Vol. II, p. 459.

[6] Joint report of Bering Sea Commissioners, *post*, p. 309.

On Pribilof Islands.

state that the spaces now covered by seals are much less in area than formerly, and that a marked yearly decrease is shown to have taken place during the last five or six years.[1] Karp Buterin, native chief of the St. Paul Islanders, who has lived on the island all his life, says: "Plenty schooners came first about eight or nine years ago and more and more every year since; and the seals get less ever since schooners came; and my people kept saying, 'No cows! no cows!'"[2] Dr. William S. Hereford, who was resident physician on the Pribilof Islands from 1880 to 1891, inclusive, says: "It is an indisputable fact that large portions of the breeding rookeries and hauling grounds are bare, where but a few years ago nothing but the happy, noisy, and snarling seal families could be seen:"[3] and Mr. A. P. Loud, assistant Treasury agent on the islands from 1885 to 1889, says there was a very marked decrease in the size of the breeding grounds from 1885 to 1889.[4] Capt. Coulson, of the United States Revenue Marine, who cruised in Bering Sea in 1870, 1890, and 1891, also mentions the fact that the decrease in one year (1890–'91) was

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[1] Report of American Bering Sea Commissioners, *post*, p. 340.

[2] Karp Buterin, Vol. II, p. 103; See also C. L. Fowler, Vol. II, p. 25.

[3] Vol. II, p. 36.

[4] Vol. II, p. 38.

On Pribilof Islands.

very noticeable.[1] Commander Turner, Royal Navy, in a dispatch to Rear-Admiral Hotham, dated on the *Nymphie* at Esquimault, October 8, 1891, states that "on the largest rookery, a great tract of land, which a few years ago had been covered with seals, and the bowlders and rocks which had been worn smooth by them, was now totally deserted, and no increase had been observed on other rookeries to compensate for this deficiency."[2]

How great has been the decrease in the number of seals is most plainly shown by the charts marked A to K. The areas covered by breeding seals in 1891, which were carefully platted by the Government surveyor from observations and measurements made by him during his survey, should be compared with the lines of increase heretofore mentioned.[3] M. C. Erskine, a sea captain of twenty-four years' experience in Alaskan waters, speaks of the scarcity of seals in Bering Sea in 1890 as compared with the numbers seen in former years.[4] Treasury Agent Goff, who was in charge of the islands in 1889 and 1890, and who had reported the decrease of seals to the Government, in consequence of which report the

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[1] Vol. II, p. 415.

[2] British Blue Book, U. S. No. 3 (1892), C–6635, p. 113.

[3] *Ante*, p. 165.

[4] Vol. II, p. 422.

On Pribilof Islands.

number of seals to be taken had been reduced to sixty thousand, and the time for killing limited to July 20,[1] says: "As a result of the enforcement of these regulations the lessees were unable to take more than twenty-one thousand two hundred and thirty-eight seals of the killable age, of from one to five years, during the season of 1890, so great had been the decrease of seal life in one year. and it would have been impossible to obtain sixty thousand skins even if the time had been unrestricted."[2] He further adds that the weather in 1890 was as favourable to seal driving as in 1889 (when one hundred thousand skins were taken) and the driving was conducted as diligently in the latter year as in the former.[2] Besides the foregoing testimony, the natives and white residents on the islands state that the seals began to decrease in 1885 or 1886, and that the decrease has been the most rapid in the last three years.[3]

Evidence.

Along the coast.

Thomas Gibson, a seal hunter since 1881, says there has been a great decrease in the number of seals in the North Pacific and Bering Sea since

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[1] *Ante*, p. 153.

[2] Vol. II, p. 112.

[3] Anton Melovedoff, Vol. II, p. 143; Aggie Kushin, Vol. II, p. 128; Nicoli Krukoff, Vol. II, p. 132; John Fratis, Vol. II, p. 108; Alexander Hansson, Vol. II, p. 116; Daniel Webster, Vol. II. p. 181; C. L. Fowler, Vol. II, p. 141; Edward Hughes, Vol. II, p. 37.

Along the coast.

he began hunting,[1] and he is supported in this statement by James L. Carthcut, captain of a sealing vessel from 1877 to 1887, Alexander McLean, a captain of a sealing schooner for eleven years, Daniel McLean, also with eleven years' experience, and many others.[2] Peter Brown, chief of the Makah Indians at Neah Bay, in the State of Washington, a tribe who from time immemorial have been expert seal hunters and have through their industry acquired much property[3] and are among the few civilized aboriginal tribes of North America, testifies to the decrease in the seal herd.[4] Hastings Yethow, an old Indian residing at Nicholas Bay, Prince of Wales Island, who has hunted seals from boyhood, says: "Since the white men with schooners began to hunt seal off Prince of Wales Island, the seals have become very scarce and unless they are stopped from hunting seal they will soon be all gone. If the white men are permitted to hunt seal much longer the fur-seal will become as scarce as the sea-otter, which were quite plenty around Dixon Entrance when I was a boy. The Indians are obliged to go a

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[1] Vol. II, p. 432.

[2] G. Fogel, Vol. II, p. 424; G. Isaacson, Vol. II, p. 440; James Sloan, Vol. II, p. 477; J. D. McDonald, Vol. II, p. 266; Louis Culler, Vol. II, p. 321.

[3] Vol. II, p. 378.

[4] *Ibid.*, pp. 377, 378.

Along the coast.

long way for seal now, and often return after two or three days' hunt without any."[1] George Skultka, chief of the Hyda Indians at Howkan, says: "There are no seals left now; they are most all killed off."[2] Chief Frank, Second Chief of the Kaskan Indians, states that "fur-seal are not as plenty as they used to be and it is hard for the Indians to catch any," and closes his testimony with the words, "there is one thing certain, seals are getting scarce."[3] Thomas Lowe, a seal hunter belonging to the Clallam tribe, Vassili Feodor, a native hunter of the village of Soldovoi in Cook's Inlet, and many other Indians living along the coast from the Straits of Juan de Fuca to Cook's Inlet, make the same assertion.[4] That this decrease, in respect to which the evidence is so unanimous from every point of observation, was not caused by any change in the methods employed on the islands has already been shown by the testimony of numerous reliable witnesses, who prove that

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[1] Vol. II, p. 303; See also Chief Thomas Skowl, Vol. II, p. 300; Smith Natch, Vol. II, p. 299; Nashtou, Vol. II, p. 298; Robert Kooko, Vol. II, p. 296.

[2] Vol. II, p. 290.

[3] Vol. II, p. 280.

[4] Alfred Irving, Vol. II, p. 387; Circus Jim (Neah Bay), Vol. II, pp. 380, 381; Weckenunesch (Barclay Sound), Vol. II, p. 311; Martin Singay (Sitka Bay), Vol. II, p. 268; Kinkooga (Yakutat Bay), Vol. II, p. 240; Mike Kethusduck (Sitka Bay), Vol. II, p. 262; Echon (Shakan) Vol. II, p. 280; Simeon Chin-koo-tin (Sitka Bay), Vol. II, p. 257.

Along the coast.

there was no change in the manner of handling and taking the seals in the last decade from that employed in former years, during which the seal herd materially increased.[1]

CAUSE.

Lack of male life not the cause.

Nor was this marked decrease chargeable to the fact that there were not sufficient males to serve the females resorting to the islands.[2] Mr. J. C. Redpath, already quoted as one thoroughly familiar with seal life on the islands, says: "A dearth of bulls on the breeding rookeries was a pet theory of one or two transient visitors, but it only needed a thorough investigation of the rookeries to convince the most skeptical that there were plenty of bulls and to spare, and that hardly a cow could be found on the rookeries without a pup at her side."[3] Karp Buterin, Head Chief of the natives of St. Paul Island, says: "Plenty of bulls all the time on the rookeries, and plenty bulls have no cows. I never seen a three-year-old cow without a pup in July; only two-year-olds have no pups."[4] Agent Goff particularly testifies that although the lessees had much diffi-

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[1] *Ante*, p. 164.

[2] J. Stanley Brown, Vol. II, p. 18; Anton Melovedoff, Vol. II, p. 142; Daniel Webster, Vol. II, p. 181.

[3] Vol. II, p. 151.

[4] Vol. II, p. 104.

Lack of male life not the cause.

culty to procure their quota in 1889, a sufficient number of males were reserved for breeding purposes.[1] Col. Joseph Murray, assistant agent on the islands in 1890, and still holding that position, says: "I saw nearly every cow with a pup by her side and hundreds of vigorous bulls without any cows."[2] And this statement is supported by Mr. J. Stanley Brown, who was on the islands in 1891.[3] Maj. W. H. Williams, the present agent of the United States Government on the Pribilof Islands, and who held that position in 1891, says: "During the season of 1891 nearly every mature female coming upon the rookeries gave birth to a young seal; and there was a great abundance of males of sufficient age to again go upon the breeding grounds that year, as was shown by the inability of large numbers of them to secure more than one to five cows each, while quite a number could secure none at all."[4] Aggie Kushin, for several years assistant priest in the Greek Catholic Church, and resident on St. Paul Island since 1867, says: "We noticed idle, vigorous bulls on the breeding rookeries because of the scarcity of cows, and I have noticed that the cows have decreased steadily every year since 1886,

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[1] Vol. II, p. 112.
[2] Vol. II, p. 74.
[3] Vol. II, p. 14.
[4] Vol. II, p. 94.

Lack of male life not the cause.

but more particularly so in 1888, 1889, 1890, and 1891."[1] And the fact that the conflicts took place between the bulls on the rookeries in 1890 and 1891 is sufficient to show that virile males were not lacking.[2] It has also been shown that the decrease in the seals took place primarily among the female portion of the herd.

Raids on rookeries not the cause.

Raids upon the rookeries, or the unlawful killing of seals on the islands by unauthorised persons, though injurious to seal life,[3] have played no important part in the history of the rookeries, and the few thousand skins thus secured never affected the number of the seal herd to any extent.[4] The American Commissioners after asserting that the number of seals killed by raiders is very inconsiderable, continue : "It is also difficult for one familiar with the rookeries and the habits of the seal to conceive of a raid being made without its becoming known to the officers in charge of the operations upon the islands. The 'raid theory,' therefore, may be dismissed as unworthy, in our judgment, of serious consideration."[5] Mr. Stanley

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[1] Vol. II, p. 128. See also John Fratis, Vol. II, p. 109; H. N. Clark, Vol. II, p. 159; Daniel Webster, Vol. II, p. 181.

[2] Report of American Bering Sea Commissioners, *post*, p. 349.

[3] H. H. McIntyre, Vol. II, p. 46; T. F. Morgan, Vol. II, p. 65.

[4] W. B. Taylor, Vol. II, p. 177; J. H. Moulton, Vol. II, p. 72; H. H. McIntyre, Vol. II, p. 46; Aggie Kushin, Vol. II, p. 128; John Fratis, Vol. II, p. 108.

[5] Report of American Bering Sea Commissioners, *post*, p. 378.

Raids on rookeries not the cause.

Brown, in considering this question, and after a careful examination of the statistics relating thereto, says: "The inhospitable shores, the exposure of the islands to surf, the unfavorable climatic conditions, as well as the presence of the natives and white men, will always prevent raids upon the islands from ever being frequent or effective."[1] A further evidence of the infrequency of such marauding is clearly shown by the affidavit of Mr. Max Heilbronner, Secretary of the Alaska Cômmercial Company, as compiled from the records of said company,[2] and the statement compiled by the Treasury Department from the reports of their agents during American occupation, there being but sixteen such invasions reported.[3] If other raids had taken place besides these, the fact would certainly have been known on the islands, as their effect would have been seen on the breeding grounds in the shape of dead carcasses of pups and other seals.[4] The difficulty of landing upon the rookeries without being discovered is also made evident from the ineffectual efforts of predatory vessels to land men on the islands, which are

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[1] J. Stanley Brown, Vol. II, p. 18.

[2] Max Heilbronner's statement, Vol. II, pp. 112–127.

[3] Treasury Department, statement of raids, Vol. II, p. 519.

[4] Anton Melovedoff, Vol. II, p. 143.

Raids on rookeries not the cause.

described by members of the crews of such vessels.[1]

Management of rookeries not the cause.

If, then, this marked decrease in the Alaskan seal herd has not been caused by the way the seals are handled or kliled upon the islands, nor by a lack of male life resulting from excessive destruction of bachelor seals by the lessees of the seal rookeries with the consent of the Government of the United States, nor by the depredations of marauding parties upon the islands, another cause of destruction must be sought.

Excessive killing the admitted cause.

It is admitted by all parties to this controversy that a decrease has taken place in the Alaskan seal herd which has been "the result of excessive killing by man."[2] The acts of man in destroying seal life can be performed either upon the islands which the seals have chosen for their home or in the waters of the Pacific Ocean or Bering Sea, while the herd is performing its annual migration or during its stay at the islands. That such destruction of the species on the islands has not caused the great decrease in the number of seals has already been shown; there remains, therefore, but one other possible cause, namely, the killing of seals during their migra-

Pelagic sealing the sole cause.

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[1] Joseph Grymes, Vol. II, p. 434; Peter Duffy, Vol. II, p. 421.

[2] Joint Report of the American and British Commissioners, *post*, p. 309.

tion or in the waters adjacent to the islands; in other words, the sole cause of the present depleted condition of the Alaskan seal herd is open-sea sealing. This is shown particularly from the fact that the decrease has been principally in the female portion of the seal herd,[1] which will be shown later to form from eighty to ninety per cent. of the pelagic catch.[2] That such is the cause of decrease is the concurrent opinion of a great number of witnesses, Indians and whites, of many occupations and of varied experience. The American Bering Sea Commissioners, after a careful and exhaustive examination into the question of decrease, report the cause to be pelagic sealing.[3] Dr. J. A. Allen, after examining and duly weighing the sources of information, American, British, and Canadian, declares it to be his opinion that pelagic sealing has been the sole cause of the great decrease in the Alaskan seal herd.[4] Such witnesses as Thomas F. Morgan, H. H. McIntyre, and others, of twenty years' experience with the Alaskan herd and thoroughly conversant with all the conditions and phases of seal life, state

**Pelagic sealing the sole cause.**

**Opinions.**

**American commissioners.**

**Dr. Allen.**

**Experts.**

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[1] Report of American Bering Sea Commissioners and the witnesses examined by them, *post*, p. 341; Karp Buterin, Vol. II, p. 103.

[2] Report of American Bering Sea Commissioners, *post*, p. 367.

[3] Report of the American Bering Sea Commissioners, *post*, p. 379.

[4] Article by Dr. Allen, Part III, Vol. I, p. 410.

Experts.

the sole cause of the decrease to be pelagic sealing.[1] Capt. Daniel Webster, already mentioned, and one of the most, if not the most, experienced white man in seal habits and life, after mentioning the increase of seals from 1870 to 1880 and the rapid decrease from 1884 to 1891, says: "In my judgment there is but one cause for that decline and the present condition of the rookeries, and that is the shotgun and rifle of the pelagic hunter, and it is my opinion that if the lessees had not taken a seal on the islands for the last ten years we would still find the breeding grounds in about the same condition as they are to-day, so destructive to seal life are the methods adopted by these hunters."[2] Dr. W. S. Hereford, with eleven years' experience on the seal islands, says: "I made the conditions of seal life a careful study for years, and I am firmly of the opinion their decrease in number on the Pribilof Islands is due wholly and entirely to hunting and killing them in the open sea."[3] Charles F. Wagner, who was located at Unalaska in 1871, and has been a fur trader since 1874 to the present time, says: "I am

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[1] T. F. Morgan, Vol. II, p. 65; H. H. McIntyre, Vol. II, p. 46; Gustave Niebaum, Vol. II, p. 203.

[2] Vol. II, p. 184.

[3] Vol. II, p. 36.

Experts.

sure the decrease is caused by the killing of females in the open sea."[1] (It will be shown later in discussing the method and catch of open-sea sealing vessels that a large percentage of the seals thus taken are females.)[2] Prof. W. H. Dall, the well known scientist and author, says: "It is evident that the injury to the herd from the killing of a single female, that is, the producer, is far greater than from the death of a male, as the seal is polygamous in habit; the destruction to the herd, therefore, is just in proportion to the destruction of female life. Killing in the open waters is peculiarly destructive to this animal."[3]

Indian hunters.

A large number of Indians along the Pacific coast from Oregon to the passes of the Aleutian Islands, whose depositions are appended hereto, are unanimous in declaring the cause of decrease in the seal herd to be open-sea sealing as it has been conducted for the past six or seven years. Evan Alexandroff, priest at Soldovoi in Cook's Inlet, unites with several native seal hunters of that locality in stating that "fur-seals were formerly much more plentiful, but of late years are becoming constantly scarcer. This is, we think, owing to the number of vessels engaged in hunt-

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[1] Vol. II, p. 212.
[2] *Post*, p. 196.
[3] W. H. Dall, Vol. II, p. 24.

Indian hunters.

ing them at sea."[1] Nicoli Apokche, a native fur trader at Fort Alexander, Cook's Inlet, says: "Fur seals were formerly observed in this neighborhood in great numbers, but of late years they have been constantly diminishing, owing to the large numbers of sealing vessels engaged in killing them,"[2] and his affidavit is signed by several other natives of that region engaged in seal hunting. Peter Brown, the old chief of the Makah Indians, already quoted, says: "White hunters came here about five or six years ago and commenced shooting the seals with guns, since which time they have been rapidly decreasing and are becoming very wild."[3] Ellabash, another Indian of the same tribe, confirms this statement in the following words: "Seals are not so plentiful now as they were a few years ago. They began to decrease about five or six years ago. A good many years ago I used to capture seals in the Straits of Juan de Fuca, but of late years, since so many schooners and white men have come around here shooting with guns, that only a few come in here and we do not hunt in the Straits any more. I used to catch forty or fifty seals in one day, and now if I get six or seven I would have great luck. I have to go a long distance to get seals now. Seals are wild and afraid of an Indian. They have become so since the white man and the trader began to shoot them with shotguns and rifles. In a short time there will be no seals left for the Indian to kill with the spear."[1] Watkins, also a Makah Indian, who has hunted seals for forty years in a canoe off Cape Flattery, after mentioning the decrease in the seals, says: "So many schooners and white men are hunting them with guns all along the coast that they are getting all killed off."[2] Many other members of the same and other tribes also add their testimony that the cause of decrease in the migrating herd is due to pelagic sealing by white men.[3]

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[1] Vol. II, p. 229.
[2] Vol. II, p. 224.
[3] Peter Brown, Vol. II, p. 378.

Indian hunters.

Numerous pelagic sealers also, in spite of their interest being contrary to such a conclusion, admit, not only the decrease in the number of seals, but that such decrease has been caused by those engaged in their occupation. Frank Johnson, for ten years a seal hunter, on being asked the question to what he attributed the decrease, replied: "The increase of the fleet and killing of all the

White sealers.

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[1] Vol. II, p. 385.

[2] Vol. II, p. 395.

[3] Ishka, Vol. II, p. 388; Wispoo, Vol. II, p. 397; George La Cheek, Vol. II, p. 265; Jim Kasooh, Vol. II, p. 296; King Kaskwa, Vol. II, p. 295; Percy Kahiktday, Vol. II, p. 261.

White sealers.

females," adding that if continued the seal herd would soon be exterminated.[1] Alexander McLean, the well known sealing captain, accounts for the decrease as being the result of killing the female seals in the water, and there is no chance for the seals to increase because so many vessels are going into the sealing business.[2] Daniel McLean attributes the decrease to "killing off the females."[3] He is supported in this statement by H. Harmsen, a seal hunter of many years' experience;[4] Niles Nelson,[5] Adolphus Sayers,[6] and others engaged in the same occupation.[7] William Hermann, who has been a seal hunter for more than a decade, says: "I think they (the seals) are decreasing on account of their being hunted so much."[8] William McIsaac says: "I think there are so many boats and hunters out after them that they are being killed off; they are hunted too much."[9] William H. Long, a captain of a sealing vessel, takes the same view of the

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Vol. II, p. 441.

[2] Vol. II, p. 437.

[3] Vol. II, p. 444.

[4] Vol. II, pp. 442, 443.

[5] Vol. II, p. 470.

[6] Vol. II, p. 473.

[7] Peter Collins, Vol. II, p. 413; James Kiernan, Vol. II, p. 450; Gustave Isaacson, Vol. II, p. 440.

[8] Vol. II, p. 446.

[9] Vol. II, p. 461.

White sealers.

matter,[1] as also many other sealers do.[2] Others less intimately acquainted with the business of open-sea sealing, but from experience and knowledge of seal life qualified to judge as to the cause of decrease, unite in casting the entire blame upon the pelagic sealing industry.[3] Agent Goff, in speaking of pelagic sealing, says: "If continued as it is to-day, even if killing on the islands was absolutely forbidden, the herd will in a few years be exterminated."[4] This unanimity of opinion, as expressed by every class and condition of witnesses, scientists, sealers, both Indian and white, those who have watched the seals upon the islands and those who have seen the animals during their migration up the coast, is further supported by the statistics of the sealing fleet, its catch and number, as compared with the years when no increase was observable on the islands and when decrease was noted.

Increase of sealing fleet.

The period of so-called stagnation in the number of the seal herd has been shown to be from 1880 to 1884-'85.[5] According to the table of the sealing fleet, prepared from all available

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[1] Vol. II, p. 458.

[2] E. P. Porter, Vol. II, p. 347; James E. Lennan, Vol, II, p. 370; Michael White, Vol. II, pp. 490, 491; J. D. McDonald, Vol. II, pp. 266, 267.

[3] Joseph Murray, Vol. II, p. 74; H. H. McIntyre, Vol. II, p. 46; Charles J. Goff, Vol. II, p. 112; J. Stanley Brown, Vol. II, pp. 17, 18, 19, 20.

[4] Vol. II, p. 113.

[5] *Ante*, p. 165.

Increase of sealing fleet.

sources,[1] the vessels had increased from two in 1879 to sixteen in 1880; up to 1885 the number of vessels varied from eleven to sixteen annually. Besides this it will be shown, subsequently, that the hunters employed on these vessels during the period from 1880 to 1885 were principally Indians, and that their method of taking seals, though injurious, is not nearly as destructive of life as that employed by other hunters. In 1886, the year when the decrease in the seal herd was first noticed along the coast, the fleet increased from fifteen vessels to thirty-four, and over thirty-eight thousand skins were known to have been secured that year.[2] In 1887 there were forty-six vessels engaged in sealing, but a less number of skins were taken. In 1888, owing to the seizure of several schooners in Bering Sea by the United States Government, the fleet fell off to thirty-nine vessels, the catch being about thirty-seven thousand.[3] No seizures being made in 1888, the fleet increased again in 1889, numbering sixty-nine vessels, with a total catch of over forty thousand.[4] Vessels having been seized in 1889, the number again fell off in 1890 to sixty, but the catch increased to nearly

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[1] Table of sealing fleet, Vol. I, p. 591.

[2] Report of American Bering Sea Commissioners, *post*, p. 366.

[3] Report of American Bering Sea Commissioners, *post*, p. 366.

[4] *Ibid.*, *post*, p. 366.

Increase of sealing fleet.

fifty thousand.[1] In 1890 the sealers were unmolested, and so in 1891 the number of vessels was nearly doubled, reaching the enormous figure of one hundred and fifteen,[2] but the catch, because of the ever-increasing scarcity of the seals, reached but sixty-two thousand five hundred.[2]* The agreement between Great Britain and the United States in relation to pelagic sealing in Bering Sea in 1892, and the orders to naval vessels pursuant thereto, have not been of such a nature as to invite investment in the sealing fleet, and yet, in spite of the restrictions imposed and dangers incurred, the fleet of sealing vessels for 1892 is known to contain at least one hundred and twenty-three,[3] which is below the actual number, as undoubtedly vessels have been engaged of which the United States Government has received no reports. The decrease in the seal herd has thus been proportionate to the increase of the sealing fleet.[4] Another significant fact in this connection is that, until the period of decrease began, the sealing vessels did not, as a

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[1] Report of American Bering Sea Commissioners, *post*, p. 366.

[2] *Ibid.*, *post*, p. 371.

[3] Table of sealing fleet, Vol. I, p. 591.

[4] J. C. Redpath, Vol. II, p. 141; Alexander C. Shyha, Vol. II, p. 226.

* It is probable that the various annual catches given are much too small, as it has been most difficult to obtain data and statistics in this respect.

Increase of sealing fleet.

rule, enter Bering Sea.[1] William Parker, for ten years engaged in the sealing business, says: "There was hardly ever a sealing schooner that went to Bering Sea during these years (1881–1884) or prior to 1885."[2] John Morris, a mate of a sealing vessel for several years, says: "Prior to this (1885) I had never been in the Bering Sea, and with but few exceptions sealing vessels did not visit those waters."[3] These two facts,

Comparison of sealing fleet and decrease.

then, are plainly shown, that when the sealing fleet consisted of a small number of vessels, carrying Indian hunters, and the sealing was confined to the Pacific coast, no decrease took place in the number of seals; but all increase ceased when the sealing fleet increased in numbers. The vessels being outfitted with white hunters, using firearms, and the hunting grounds extended so as to include Bering Sea, the decrease in the seal herd became marked and rapid, constantly becoming greater as the fleet of sealing vessels increased.

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[1] Andrew Laing, Vol. II, p. 335; Charles Peterson, Vol. II, p. 346.

[2] Vol. II, p. 344.

[3] Vol. II, p. 340.

## PELAGIC SEALING.

### HISTORY.

Sealing by Coast Indians.

Open-seal sealing, the sole cause of the enormous decrease noted in the Alaskan seal herd in the last few years, and which threatens its extermination in the near future, was carried on by the Pacific coast natives in their canoes for many years previous to the introduction of sealing schooners. The catch was small, ranging from three to eight thousand annually,[1] and there was little or no waste of life from the loss of seals killed and not secured, as will be seen when the means and manner of hunting employed by the Indians is considered.

Vessels used.

Even after vessels were employed in the industry, which, according to Mr. Morris Moss, vice-president of the Sealers' Association of Victoria, British Columbia, was about the year 1872,[2] the fleet was small, not numbering over half a dozen vessels.[2] Indians only were employed as hunters, and the seals were killed with spears.[2] With the introduction of schooners to carry the canoes out into the ocean, the sealing grounds were extended

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[1] C. M. Scammon, Vol. II, p. 475.

[2] Morris Moss, Vol. II, p. 341.

Vessels used.

from the area covered by a canoe trip of twenty miles from a given point on the coast[1] to the waters frequented by the migrating herd from the Columbia River to Kadiak Island.[2] In 1883 the schooner *San Diego* entered Bering Sea and returned to Victoria with upwards of two thousand skins. This gave impetus to the trade, and new vessels embarked in the enterprise.[3]

Introduction of fire-arms.

About 1885 a new method of hunting was introduced, which has been the great cause of making pelagic seal hunting so destructive and wasteful of life—the use of firearms.[4] White men now became the principal hunters, and where previously the number of skilled and available sealers had necessarily been limited to a few hundred coast natives, the possibility of large rewards for their labors induced many whites to enter the service of those engaged in the business of seal destruction. From that time forward the sealing fleet rapidly increased in number,[5] until it now threatens the total extinction of the northern fur-seal.

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[1] Peter Brown, Vol. II, p. 377; Alfred Irving, Vol. II, p. 386; Wilson Parker, Vol. II, p. 392; Hish Yulla, Vol. II, p. 397.

[2] Peter Brown, Vol. II, p. 377.

[3] Morris Moss, Vol. II, p. 341.

[4] Charlie, Vol. II, p. 304; Moses, Vol. II, p. 309; Wispoo, Vol. II, p. 396.

[5] *Ante*, p. 183; Gustave Niebaum, Vol. II, p. 78.

## METHOD.

**Vessels, outfit, etc.**

The vessel commonly used in sealing is a schooner ranging from twenty to one hundred and fifty tons burden; the average tonnage per vessel for the Victoria fleet in 1890 being 63.2 tons.[1] The number of hunters and canoes or boats carried by a sealer depends upon the size of the vessel, but the average number of canoes is between ten and sixteen, each manned by two Indians,[2] and when the hunters are whites the boats generally number five or six.[3] In some cases both Indians and whites are employed on the same vessel.[4] The average number of men to a vessel in 1890 was twenty-two.[1]

**Indian hunters.**

The Indian hunter almost invariably uses a spear, and though in the last two or three years firearms have been carried in the canoe,[5] the principal weapon used by him is still the spear.[6] A full description of the spear, canoe, and manner of hunting is given by Lieut. J. H. Quinnan, who accompanied some of the Indians in their canoe during a hunting excursion.[7] The most

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[1] Canadian Fisheries Report, 1890, page 183.

[2] Niels Bonde, Vol. II, p. 315–316; Moses, Vol. II, p. 310.

[3] Patrick Maroney, Vol. II, p. 464; J. Jamieson, Vol. II, p. 329–330; Niels Bonde, Vol. II, p. 316.

[4] James Dalgarduo, Vol. II, p. 364.

[5] Peter Brown, Vol. II, p. 377; Morris Moss, Vol. II, p. 341.

[6] Peter Brown, Vol. II, p. 377; Moses, Vol. II, p. 309.

[7] Report of Lieut. J. H. Quinnan, Vol. I, p. 504. See also A. B. Alexander, Vol. II, p. 352.

Indian hunters.

expert spearsmen are the Makah Indians of Neah Bay, Washington.[1] The Indian, from his method of hunting, loses very few seals that he strikes, securing nearly all.[2]

White hunters.

The white hunter, on the contrary, loses a great many seals which he kills or wounds.[3] Each boat contains a hunter, a boat-steerer, and a boat-puller;[4] the hunter uses a rifle,[5] a shotgun,[6] or both,[7] the shotgun being loaded with buckshot.[8] A minute description of the methods employed by both white and Indian hunters is given by Capt. C. L. Hooper, commander of the United States revenue steamer *Corwin*, who was many years in the waters of the North Pacific and Bering Sea, and makes his statements from personal observation.[9]

## RESULTS.

Waste of life.

There are two ways in which a seal may be destroyed by this method of hunting without being secured; one is by wounding it so that, though it still retains vitality enough to escape from the hunter, it subsequently dies of its injuries; the other is by the sinking of the seal, killed outright, before the boat can be brought alongside and the carcass seized by the hunter.

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[1] A. B. Alexander, Vol. II, p. 352.

[2] Thomas Zolnoks, Vol. II, p. 399; Osly, Vol. II, p. 391; Watkins, Vol. II, p. 395.

[3] James Kiernan, Vol. II, p. 450; James Kennedy, Vol. II, p. 449.

[4] Thomas Lyons, Vol. II, p. 460; James Moloy, Vol. II, p. 463; James Kennedy, Vol. II, p. 449.

[5] James Kennedy, Vol. II, p. 449; Eddie Morehead, Vol. II, p. 467; George Zammitt, Vol. II, p. 507.

[6] L. G. Shepard, Vol. II, p. 188; Adolphus Sayers, Vol. II, p. 473.

[7] Patrick Maroney, Vol. II, p. 464; Peter Collins, Vol. II, p. 413.

[8] Charles Lutjens, Vol. II, p. 459.

[9] Report of Capt. C. L. Hooper to the Treasury Department, dated June 14, 1892; Vol. I, p. 498. See also as to white hunters, William Brennan, Vol. II, pp. 360, 361.

Waste of life.

Of the first of these means of loss Dr. Allen says: "Those only wounded, whether fatally or otherwise, dive and escape capture. The less severely wounded may, and in many cases doubtless do, recover from their wounds, but in the nature of things many others must die of their injuries. There is a wide range of chances between an instantaneously fatal or disabling shot and a slight wound from which the victim may readily recover, with obviously a large proportion of them on the fatal side of the dividing line."[1] This is self-evident when the fact is taken into consideration that the boat is in almost constant motion, and the mark is the small head of a seal among the waves thirty, forty, fifty,[2] or, when a rifle is used, even a hundred yards[3] from the hunter. Four other conditions also modify this possibility of loss; first, the state of the weather, for if the water is rough the boat and

Wounding.

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[1] Article by Dr. Allen, Part III, Vol. I, p. 409.
[2] T. T. Williams, Vol. II, p. 494.
[3] T. T. Williams, Vol. II, p. 503.

Wounding.

the seal having more motion the percentage of those killed or stunned by the shot is much less than when the sea is smooth;[1] second, the condition of the seal shot at, or if breaching, the shot being at the body is not as liable to paralyze the animal, though it may be as fatal as when the seal is asleep on the water with only a portion of its head exposed as a mark;[2] third, the skill of the hunter is also to be considered;[3] and fourth, whether or not the seals are wild and hard to approach, in which case the hunter is from necessity compelled to fire at long range. The Indian hunters, with their spears, who are forced to approach much nearer the game than a white hunter armed with rifle or shotgun, speak particularly of the increased timidity of the seals since firearms have been used in taking them.[4] They also state that many seals taken by them have shot imbedded in their bodies,[5] and some are badly wounded.[6] This, besides being evidence of the great number wounded and lost, naturally tends to making the seals fearful of the approach of man. Not only has the increase in the number of white hunters in the last few years made the seals much wilder than before firearms were used, but it has also added largely to the number of inexperienced hunters engaged in sealing. It is only necessary, in order to show how much the unskillful outnumber the skillful hunters, to refer to the agreement entered into by the members of the Sealers' Association of Victoria, British Columbia, for the season of 1891; the portion of the agreement referring to this matter is as follows: "We also bind ourselves not to take more than three experienced hunters in the sealing business on each vessel represented by us, said hunters to be engaged at the scale or lay adopted by this Association, as hereinbefore particularly described; and we also agree that all hunters required in excess of the three hunters above mentioned for each vessel shall be new men at the business of seal hunting, and shall be engaged at the same scale or lay hereinbefore mentioned, and this clause shall apply to all vessels owned or controlled by the members of this Association, whether clearing from the port of Victoria or other ports in Canada or the United States, or any port where any vessel owned or controlled by any member of this Association may be fitting out for sealing on this coast."[1]

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[1] John H. Dalton, Vol. II, p. 418; James Kiernan, Vol. II, p. 450; William McIsaac, Vol II, p. 461.

[2] T. T. Williams, Vol. II, pp. 494, 504; Niles Nelson, Vol. II, p. 469.

[3] Daniel Claussen, Vol. II, p. 412; Luther T. Franklin, Vol. II, p. 425; James Kiernan, Vol. II, p. 450; James Kean, Vol. II, p. 448.

[4] James Lighthouse, Vol. II, p. 389; Watkins, Vol. II, p. 395.

[5] Wispoo, Vol: II, p. 397; James Lighthouse, Vol. II, p. 390.

[6] James Lighthouse, Vol. II, p. 390.

Wounding.

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[1] See British Blue Book, U. S. No. 1 (1891), C-6253, p. 82.

Wounding.

The number of hunters thus allowed to a vessel is therefore about one-half the number of those actually taken on a vessel employing white hunters.

Sinking.

Besides those lost by wounding, in many cases, others killed outright are not taken, because the specific gravity of the seal being greater than water[1] it sinks before it can be secured.[2] In order to save as many of the sinking seals as is possible, each boat carries a gaff,[3] with a handle from four to six feet long, with which to grapple the carcass if the point where it sank can be reached in time to do so.[4] Of course in securing a sinking seal much depends on the distance from which the seal was shot, the condition of the water, whether rough or smooth, and whether or not darkened by the blood of the animal,[5] as also the skill of the hunter in marking with his eye the place where the seal sank. It can, therefore, be seen that the range of possible and probable loss in case the seal is killed outright is certainly large, though not so great as when the seal is wounded.

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[1] Article by Dr. Allen, Part III, Vol. I, p. 409.

[2] Thomas Brown (No. I), Vol. II, p. 319; Bernhardt Bleidner, Vol, II, p. 315; John W. Smith, Vol. II, p. 233; John Woodruff, Vol. II, p. 506.

[3] T. T. Williams, Vol. II, p. 504; L. G. Shepherd, Vol. II, p. 188.

[4] T. T. Williams, Vol.II, p. 504; Henry Mason, Vol. II, p. 465; James Laflin, Vol. II, p. 451.

[5] Henry Brown, Vol. II, p. 318.

Percentage lost of those killed.

Under the circumstances, it is most difficult to fix the actual number of seals destroyed and not secured by hunters using firearms; but it is a conservative estimate to say that such hunters lose at least two out of every three seals shot by them. Charles Chalall, a seal hunter, says: "The average hunter would get one out of every three seals shot; a poor hunter not nearly so many."[1] Thomas Gibson, a seal hunter, or engaged in the sealing business, since 1881, says: "An ordinary hunter would not get more than one out of every three or four that he killed."[2] Daniel McLean states "that about one-third are taken;"[3] and Capt. Martin Benson, of the sealing schooner *James G. Swan*, says about sixty-six per cent. are lost.[4] These men are all hunters of long experience, and their statements are not only supported by many others,[5] but numerous witnesses give the number lost at a much larger figure. E. W. Soron, mate of a sealing vessel in 1888, says: "We only got about one out of every five killed."[6] Thomas Brown (No. 1), a boat-puller for three years,

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[1] Vol. II, p. 411.

[2] Vol. II, p. 432.

[3] Vol. II, p. 443.

[4] Vol. II, p. 405.

[5] Thomas Lyons, Vol. II, p. 460; Bernhardt Bleidner, Vol. II, p. 315; M. L. Washburne, Vol. II, p. 489; Martin Hannon, Vol. II, p. 445.

[6] Vol. II, p. 479.

Percentage lost of those killed.

states: "I don't think we got more than one seal out of six that we killed."[1] Caleb Lindahl, a seal hunter, says: "On an average a hunter gets one seal out of four. I have known of poor hunters losing nine out of ten."[2] Henry Mason, also a seal hunter, says: "I do not think they would get more than one seal out of every six or seven they shot, and sometimes only one out of ten."[3] To these statements are added many others by competent and experienced witnesses, which may be found in the Appendix hereto annexed.[4] When the estimate, therefore, is placed at sixty-six seals unsecured out of every hundred killed with firearms, the probability is that the percentage lost is even more. Certainly this percentage is constantly increasing, for the rapid growth of the sealing fleet in the last two years has increased the number of unskillful hunters, and the constant hunting of the herd has made the seals wilder each year than the year before.[5]

Destruction of female seals.

Besides the great waste of life caused by the present method of sealing, another feature of pelagic hunting adds greatly to its destructive effect upon the Alaskan seal herd, namely, the

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[1] (No. 1), Vol. II, p. 319.

[2] Vol. II, p. 456.

[3] Vol. II, p. 465.

[4] William Parker, Vol. II, p. 344; Olaf T. Kvam, Vol. II, p. 236; William McIsaac, Vol. II, p. 461; George Usher, Vol. II, p. 291.

[5] Thomas Brown (No. 1), Vol. II, p. 319.

Destruction of female seals.

fact that from eighty to ninety per cent of the seals killed in the open sea are females, the majority of which are either pregnant, or having been delivered of their pups, are the sole means of sustenance for their offspring. The sex of a seal can not be told when it is in the water, except an old bull seal, who can be recognized by his size.[1] Under these circumstances it is impossible to discriminate as to sex,[2] and no effort is made to do so, the hunters shooting or spearing every seal that approaches the boat.[3] On this point there is a large array of testimony to be found in the Appendix. Rear-Admiral Sir M. Culme-Seymour, in a communication to the British Admiralty, says, in relation to this matter: "I may mention that female seals can not be distinguished from males when killed asleep on the water at sea."[4] As has already been shown, the destruction of the females of the herd is the principal cause of the decrease,[5] and the full extent of the pernicious effects of pelagic sealing is clearly shown on examination of the sex of the seals taken by the sealing vessels.

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[1] J. A. Bradley, Vol. II, p. 227; Chickinoff, et al., Vol. II, p. 219; F. F. Feeney, Vol. II, p. 220.

[2] E. W. Soron, Vol. II, p. 479; Charles Peterson, Vol. II, p. 345.

[3] Gregaroff, et al., Vol. II. p. 234; N. Hodgson, Vol. II, p. 367; E. Morehead, Vol. II, p. 467.

[4] Inclosure 3 in No. 3, British Blue Book, U. S. No. 2 (1890), C–6131, p. 4.

[5] *Ante*, p. 177.

Testimony of British furriers.

The first witnesses to receive consideration on this point are those who have handled and sorted the "Northwest" or pelagic catch. The skins of males and females can be readily distinguished from each other by those at all experienced in the fur trade.[1]

Sir George Curtis Lampson, head of the firm of C. M. Lampson & Co., one of the oldest and largest of the London fur houses, states that "the skins of the Northwest catch are largely the skins of female seals."[2] Mr. H. S. Bevington, head of the London firm of Bevington & Morris, fur dealers, which was organized in 1726, says: "The skins of the Northwest catch are at least eighty per cent of them the skins of the female animal," and that prior to and in preparation of his deposition "he carefully looked through two large lots of skins now in his warehouse, for the especial purpose of estimating the percentage of female skins found among the Northwest catch."[3] Mr. Walter Edward Martin, head of the English firm of C. W. Martin & Sons, the largest dressing and dyeing house of fur-seal skins in London, and successors of Martin & Teichmann, gives the percentage of females in the pelagic catch at

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[1] George Liebes, Vol. II, p. 511; B. H. Sternfels, Vol. II, p. 522.

[2] Vol. II, p. 565.

[3] Vol. II, p. 552.

Testimony of British furriers.

seventy-five to eighty per cent.[1] Mr. Emil Teichmann, of the firm of C. M. Lampson & Co., and formerly a member of the firm of Martin & Teichmann, mentioned above, states "that practically the whole of the adult, Northwest catch, seals were the skins of female seals."[2] Mr. Henry Poland, head of the London fur firm of P. R. Poland and Son, says that a very large proportion of the adult skins of the Northwest catch are "obviously the skins of female animals."[3] Mr. George Rice, engaged for twenty-seven years in the dressing and dyeing of seal skins in the city of London, and who has handled a large proportion of the Northwest skins, says: "That in the Northwest catch from eighty-five to ninety per cent of the skins are of the female animal."[4] And Mr. William C. B. Stamp, who has been a London fur merchant for thirty years, estimates the percentage of females in the catch of sealing vessels to be "at least seventy-five per cent" and probably more.[5] All the above prominent English furriers are subjects of Her Britannic Majesty. George Bantle, who has been a sorter and packer of raw seal skins for twenty years, gives the principal characteristics by which the skins of the two

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[1] Vol. II, p. 569.

[2] Vol. II, p. 581.

[3] Vol. II, p. 571.

[4] Vol. II, p. 573. See also Isaac Liebes, Vol. II, p. 453.

[5] Vol. II, p. 575.

Testimony of British furriers.

sexes can be determined,[1] as do also Mr. John J. Phelan[2] and Mr. William Wiepert,[3] both experienced furriers. Mr. Alfred Fraser, a subject of Her Britannic Majesty, and a member of the London firm of C. M. Lampson & Co., says: "That he would have no difficulty whatever in separating the skins of the 'Northwest' catch from the skins of the 'Alaska' catch by reason of the fact that they are the skins almost exclusively of females." This fact that the Northwest skins are so largely the skins of females is further evidenced by the fact that in many of the early sales of such skins they are classified in deponent's books as the skins of "females "[4]

Other British testimony.

Sir George Baden-Powell, one of the British Bering Sea Commissioners, addressed a letter to the London Times, which appeared in that paper November 30, 1889, in which he says: "Their (the Canadian sealers') catch is made far out at sea, and is almost entirely composed of females." On the 29th day of April, 1891, Mr. C. Hawkins, a subject of Her Britannic Majesty, addressed a letter to the Marquis of Salisbury, in which he states that "since about the year 1885 we have received in this country (England) large numbers of seal skins known in the trade

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[1] Vol. II, p. 508.
[2] Vol. II, p. 519.
[3] Vol. II, p. 535.
[4] Vol. II, p. 558.

Other British testimony.

as Northwest skins, the same having been taken in the open sea, and, from appearances that are unmistakable to the initiated, are exclusively the skins of female seals pregnant."[1]

Canadian testimony.

And the Canadian Minister of Marine and Fisheries, to whom the letter was referred, states "that the testimony produced by Mr. Hawkins in this connection is quite in accord with the information hitherto obtained."[2] In the Canadian Fisheries Report of 1886 the following statement appears: "There were killed this year so far from forty to fifty thousand fur-seals, which have been taken by schooners from San Francisco and Victoria. The greatest number were killed in Bering Sea, and were nearly all cows or female seals."[3] And again in the said report for 1888 appears the statement that the fact can not be denied "that over sixty per cent of the entire catch of Bering Sea is made up of female seals."[4] Rear-Admiral Hotham, Royal Navy, in a dispatch to the British Admiralty, dated September 10, 1890, states that he personally saw Capt. C. Cox, of the schooner *Sapphire*, Captain Petit, of the schooner *Mary Taylor*, Captain Hackett, of the schooner *Annie Seymour*,

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[1] British Blue Book, U. S. No. 3 (1892), C-6635, p. 5.

[2] British Blue Book, U. S. No. 3 (1892), C-6635, p. 75.

[3] Page 267.

[4] Report of the Department of Fisheries, Dominion of Canada (1888), p. 240.

Canadian testimony.

and Capt. W. Cox, of the schooner *Triumph*, and that "they also mentioned (among other things) that two-thirds of their catch consisted of female seals, but that after the 1st July very few indeed were captured 'in pup.'"[1]

Testimony of American furriers.

Herman Liebes for thirty-five years engaged in the seal-skin industry, and the largest purchaser of the skins brought into Victoria, British Columbia, by sealing vessels,[2] says that he "has frequently requested the captains of poaching vessels sailing from the port of Victoria and other ports, to obtain the skins of male seals, and stated that he would give twice as much money, or even more, for such skins than he would pay for the skins of female seals. Each and all of the captains so approached laughed at the idea of catching male seals in the open sea, and said that it was impossible to do it, and that they could not catch male seals unless they could get upon the islands, which, except once in a long while, they were unable to do in consequence of the restrictions imposed by the United States Government; because, they said, the males were more active, and could outswim any boat which their several vessels had, and that it was only the female seals who were heavy with young which could be caught."[3]

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[1] British Blue Book, U. S. No. 1 (1891), C–6253, p. 17.

[2] Vol. II, p. 513; British Blue Book, U. S. No. 1 (1891), C–6253, p. 80; Vol. II, p. 564.

[3] Vol. II, p. 512.

Examination of pelagic catch of 1892.

Besides the testimony of the witnesses above stated, 3,550 seals skins were shipped this year from Victoria, British Columbia, to Treadwell & Co , of Albany, New York, being a portion of the "spring catch," so called, of 1892, taken by the sealing fleet along the Pacific coast. At the request and under the direction of the Government of the United States, these skins were examined by an expert in handling seal skins, Mr. John J. Phelan, for twenty-four years engaged in the fur business, for the purpose of determining the sex of the seals from which they were taken. Such examinations resulted in showing that of the 3,550 skins, 2,167 were taken from female seals, 395 from male seals, and the remainder, 988, from pups, seals under two years of age,[1] whose sex could not easily be determined, which shows that the proportion of females in the catch of a sealing vessel is to the males as 11 to 2, or 84½ per cent. The examiner of these skins also shows how the difference in the sex can be readily determined.[1] Mr. Charles Behlow, for thirty-four years engaged in the handling and sorting of seal skins, at the request of the Government of the United States, examined, in June, 1892, four lots

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[1] Vol. II, p. 520.

Examination of pelagic catch of 1892.

of skins landed at San Francisco from sealing vessels, being the "spring catch" for 1892 of said vessels. These lots aggregated 813 skins, which on examination proved to consist of 681 skins of adult female seals, 49 skins of adult male seals, and 95 skins of pup seals less than one year old.[1] The proportion of cows in these lots is shown to be to the males as about 14 to 1, or 93 per cent. The increased proportion of females in this examination over the examination made in New York is explainable from the fact that the New York examiner did not extend his examination to seals under two years of age, while the San Francisco examiner classed as pups only the seals less than one year old. On the 13th of July, 1892, the same expert examined the catch of the schooner *Emma and Louise*, consisting of 1,342 skins, taken this spring along the Northwest coast. Of the number, 1,112 were the skins of females, 132 of males, and 98 of gray pups less than one year old.[1] The proportion of female seals taken by this vessel as compared with the males is thus shown to be 89 per cent. George Liebes, a furrier, who has handled many thousands of the Northwest skins, in connection with his deposition attaches

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[1] Vol. II, p. 402.

Examination of pelagic catch of 1892.

exhibits showing plainly how, even in the dressed and dyed skins, the sex of the animal can be readily determined,[1] and also, in the cases of the female, whether the animal was in a state of virginity, pregnancy, or maternity, the comparative size of the nipples being the test, which in the case of the two skins of males (bachelor and bull) are scarcely observable.

Testimony of pelagic sealers.

Added to this testimony of experienced furriers, a large number of those engaged in seal hunting, whose depositions are appended hereto, affirm that the seals taken by them are principally females. Luther T. Franklin, a seal hunter of three years' experience, states that about ninety or ninety-five per cent of those secured are females.[2] Daniel McLean, an experienced sealer, says that about ten in a hundred of the seals taken are males.[3] Alexander McLean, on being asked the percentage of females in a catch, replied: "Say I would bring two thousand seals in here, I may have probably about a hundred males; that is a large average."[4] Charles Lutjens, also a seal hunter, places the average of females taken at ninety per cent,[5] and in this he

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[1] Vol. II, p. 512.
[2] Vol. II, p. 425.
[3] Daniel McLean, Vol. II, p. 444.
[4] Vol. II, p. 437.
[5] Charles Lutjens, Vol. II, p. 458.

Testimony of pelagic sealers.

is supported by many others of the same profession.[1] Other sealers, without fixing a percentage, state that the seals taken are "principally"[2] or "most all"[3] females.

Examination of catch of vessels seized.

The skins upon vessels seized by United States officers in Bering Sea, which were subsequently examined, also show a similar ratio of destruction of female life. Captain Shepard says that over twelve thousand skins taken from sealing vessels seized in 1887 and 1889 were examined, and at least two-thirds or three-fourths were the skins of females.[4] Mr. A. P. Loud, assistant Treasury agent, who in 1887 captured the sealing schooner *Angel Dolly*, personally examined the skins found on board, and he states that "about eighty per cent were the skins of females."[5] Capt. A. W. Lavender, assistant Treasury agent on St. George Island, in September, 1891, made a personal examination of one hundred and seventy-two skins, the catch of the schooner *Challenge* in Bering Sea, and of the whole number only three were the skins of male seals.[6] It is only necessary to examine such an array of testimony as the foregoing to determine the cause of the rapid decrease in the Alaskan seal herd.

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[1] William Short, Vol. II. p. 348; F. Johnson, Vol. II, p. 441; H. Harmsen, Vol. II, p. 442; A. J. Hoffman, Vol. II, p. 446.

[2] William H. Long, Vol. II, p. 457; James Kean, Vol. II, p. 448; James Kennedy, Vol. II. p. 449.

[3] George Zammitt, Vol. II, p. 507; Adolph Sayers, Vol. II, p. 473; Thomas Brown (No. 1), Vol. II, p. 319.

[4] Vol. II, p. 189.

[5] Vol. II, p. 39.

[6] Vol. II, p. 265.

Examination of catch of vessels seized.

Destruction of pregnant females.

But in addition to this great slaughter of the producing sex, another waste of life is caused, as already stated, through the pregnancy or maternity of a large proportion of the female seals. As long ago as 1869 Capt. C. M. Scammon, of the United States Revenue Service, and author of "The Marine Animals of the Northwestern Coast of North America" (published in 1874), observed that nearly all the seals taken by the Indians near Vancouver Island were pregnant females, and August 30, 1869, he addressed a letter on the subject of the double slaughter resulting to the Secretary of the Treasury.[1] Bowachup, a Makah Indian hunter, says: "I never killed any full-grown cows on the coast that did not have pups in them."[2] Daniel McLean says: "The females are mostly all with pup."[3] P. S. Weittenhiller, owner of the sealing schooner *Clara*, states that of sixty seals taken this season (1892) forty-six were pregnant females.[4] James Kiernan, a sealer, states that

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[1] Vol. II, p. 474.
[2] Vol. II, p. 376.
[3] Vol. II, p. 444.
[4] Vol. II, p. 274.

Destruction of pregnant females.

the seals killed in the North Pacific are mostly females carrying their young.[1] James Jamieson, a sealer of five years' experience, makes the same statement.[2] Frank Morreau, with five or six years' experience as a seal hunter, says that about seventy-five per cent. of the cows taken are "in pup,"[3] and many others make similar statements.[4]

Reason pregnant females are taken.

One reason why such a large proportion of pregnant female seals are taken along the coast is clearly stated by Andrew Laing in his examination before Collector Milne, of the port of Victoria, British Columbia, the deponent being recognized by the collector as one of the most experienced seal hunters. On being questioned as to whether he noticed "any marked difference in the manner the females carrying their young travel as compared with the males," he replied: "The only difference I could see is that they will travel very fast for a little distance, and then turn up and rest." And again being asked whether he thought the pregnant female more shy than the male, he answered, "No, I think

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[1] Vol. II, p. 450.

[2] Vol. II, p. 329.

[3] Vol. II, p. 468.

[4] William Short, Vol II, p. 348; Ellabash, Vol. II, p. 385; Peter Simes, Vol. II, p. 476; Thomas Brown (No. 1), Vol. II, p. 319; Thomas Lyons, Vol. II, p. 460; John A. Swain, Vol. II, p. 350; James Nautajim, Vol. II, p. 272; Rondtus, Vol. II, p. 242; Amos Mill, Vol. II, p. 285; Simeon Chin-koo-tin, Vol. II, p. 256; Henry Brown, Vol. II, p. 317.

Reason pregnant females are taken.

they are not more shy. The female is always inclined to be sleepy. The male is always on the watch."[1] Capt. J. D. McDonald, owner and commander of the sealing schooner *Adventure*, who hunts from San Francisco to Kadiak, says: "Most of the seals taken by me have been females with pup"; giving as a reason that the female seals are easier to kill than the males.[2] It is evident, therefore, that the female seal, when pregnant, is much more exposed to danger than the male,[3] and this fact is also noted by the Indian hunters along the coast.[4]

Destruction of nursing females.

After the 1st of July the cows are nearly all at the rookeries, and having given birth to their young they go into the water in search of food, in order that they may be able to supply their offspring with nourishment.[5] And as has been shown, they often go from one hundred to two hundred miles from the islands on these excursions.[6] It is while absent from the rookeries feeding that they fall a prey to the pelagic seal hunter.[7] Rear-Admiral Sir M. Culme-Seymour,

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[1] British Blue Book, U.S. No. 3 (1892), C-6635, p. 184. See also James Sloan, Vol. II, p. 477; Isaac Liebes, Vol. II, p. 454.

[2] Vol. II, p. 266.

[3] British Blue Book, U.S. No. 3, 1892, C-6635, p. 184.

[4] Charlie Wank, Vol. II, p. 273; James Unatajim, Vol. II, p. 272; Simeon Chin-koo-tin, Vol. II, p. 256.

[5] *Ante*, p. 115.

[6] *Ante*, p. 116.

[7] Charles Chalall, Vol. II, p. 411; Peter Brown, Vol. II, p. 377–378; John Fyfe, Vol. II, p. 429; Henry Brown, Vol. II, p. 317–318.

Destruction of nursing females.

in a dispatch to the British Admiralty, dated at Victoria, August 24, 1886, states that three British Columbian sealing schooners had been seized by the United States revenue cruiser *Corwin*, seaward seventy miles from off the land, killing female seals.[1] Edward Shields, of Sooke District, Vancouver Island, a hunter on the British schooner *Carolina*, which was seized in Bering Sea in 1886, states that they were during the whole cruise out of sight of land, adding, "The seals we obtained were chiefly females."[2] The sealers, who have given testimony on this point in behalf of the United States, agree that nearly all the seals taken in Bering Sea are mothers in milk.[3] Moses, a Nitnat Indian hunter from Vancouver Island, in speaking of a voyage he made to Bering Sea, says: "We caught nineteen hundred seals, all of which were captured in the sea close to Unalaska; most all of them were cows in milk; but when we first entered the sea we killed a few cows that had pups in them."[4] Charles Peterson, a sealer with four years' experience, after stating that most all the seals taken in Bering Sea were cows in milk, adds: "I have seen the deck almost flooded

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[1] British Blue Book, U. S. No. 2 (1890), C-6131, p. 1.

[2] British Blue Book, U. S. No. 2 (1890), C-6131, p. 8.

[3] William H. Long, Vol. II, p. 458; Henry Mason, Vol. II, p. 465 E. P. Porter, Vol. II, p. 347.

[4] Moses, Vol. II, p. 310.

Destruction of nursing females.

with milk while we were skinning the seals."[1] Richard Dolan, a seal hunter who was in Bering Sea in 1885, says : "I saw the milk flowing on the deck when we skinned them."[2] Capt. L. G. Shepard, of the United States Revenue Marine Service, who seized several vessels in Bering Sea in 1887 while they were engaged in sealing, states that he saw milk flowing from the dead carcasses of seals lying on the decks of vessels a hundred or more miles from the Pribilof Islands.[3] Mr. Robert H. McManus, a British subject and resident of Victoria, British Columbia, made a sealing voyage in 1891 in Bering Sea on the Canadian schooner *Otto* as a newspaper correspondent. During the voyage he kept a journal of events, which he has embodied in his deposition, hereto appended, which contains his views of the matters which took place.[4] In an entry made August 29, he states the total catch of the day was seventeen seals, "greater proportion cows in milk; horrid sight, could not stay the ordeal out till all were flayed."[4] He subsequently adds: "It may be safely asserted that over three-fourths of the catch of forty-eight were cows in milk;

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[1] Vol. II, p. 345.
[2] Vol. II, p. 419.
[3] Vol. II, p. 189.
[4] Vol. II, p. 337.

Destruction of nursing females.

this at a distance of two hundred miles from the rookeries."[1] And Mr. Francis R. King-Hall, son of Sir William King-Hall, K. C. B., Admiral in the British Navy, who also was on the *Otto* during this voyage, makes substantially the same statements.[2] That a pup is entirely dependent upon its mother for the first three or four months of its life, and also that a female will not suckle any pup save her own, has already been stated.

Dead pups on the rookeries.

As a result it is evident that if the mother is killed her pup will die of starvation; and of this fact the evidence presented is unquestionable. When sealing vessels began to enter Bering Sea in pursuit of the seal herd (1884–'85) at that same period dead pup seals on the rookeries first drew the attention of the residents of the Pribilof Islands.[3]

No dead pups prior to 1884.

Professor Dall, who visited the rookeries in 1880, says: "There were not in 1880 sufficient dead pups scattered over the rookeries to attract attention, or form a feature on the rookery."[4] Captain Bryant, who was on the islands from 1870 to 1877, says, "A dead pup was rarely seen."[5] Mr. J. H. Moulton, who was

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[1] Vol. II, p. 338.
[2] Vol. II, p. 333.
[3] Nicoli Krukoff, Vol. II, p. 132.
[4] Vol. II, p. 23.
[5] Vol. II, p. 8.

No dead pups prior to 1884.

on St. George Island from 1877 to 1881, says: "There were practically no dead pups on the rookeries. I do not think I saw during any one season more than a dozen."[1] Mr. H. G. Otis, Treasury agent on the islands from 1879 to 1881, states that "it was a rare thing to find a dead pup."[2] Mr. H. A. Glidden, the Government agent from 1882 to 1885, says: "During the time I was on the islands I only saw a very few dead pups on the rookeries, but the number in 1884 was slightly more than in former years."[3]

Time of appearance of dead pups.

From this time (1884) forward dead pups on the rookeries increased in numbers annually. Mr. T. F. Morgan says; "From the year 1884 down to the present period when I left St. George Island, there was a marked increase in the number of dead pup seals."[4] Mr. A. P. Loud, assistant Treasury agent on the islands from 1885 to 1889, says that he can not make a statement as to the number of dead pups on the rookeries in 1885, as he was not present that fall: but in 1886 he saw a large number of dead pups lying about, and that these pups were very much emaciated,

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[1] Vol. II, p. 71.
[2] Vol. II, p. 87.
[3] Vol. II, p. 110. See also John Armstrong, Vol. II, p. 2.
[4] Vol. II, p. 64.

Time of appearance of dead pups.

and had evidently been starved to death. He further states that the number of dead pups in 1887 was much larger than in 1886. In 1888 there was a less number than in 1887 or in 1889, owing, he believes, to a decrease of seals killed in Bering Sea that year; but that in 1889 the increase again showed itself.[1] Dr. W. S. Hereford, already mentioned as the resident physician on the islands from 1880 to 1891, says: "The loss of pup seals on the rookeries up to about 1884 or 1885 was comparatively slight, and was generally attributed to the death of the mother seal from natural causes. Coincident with the increase of hunting seals in the sea, there was an increase in the death rate of pup seals on the rookeries."[2]

Number of dead pups in 1891.

Mr. Stanley Brown, in examining the rookeries in 1891, fixed the number of dead pups at between fifteen and thirty thousand.[3] Captain Coulson, who was on the islands the same year, says: "Thousands of dead and dying pups were scattered over the rookeries."[4] And Colonel Murray fixes the number of dead that year at "not less than thirty thousand."[5] Other witnesses support these statements.[1] The rookeries, strewn with dead and dying pups, were also in 1891 inspected by the British Bering Sea Commissioners.[2] And Kerrick Artomanoff, the old chief of the St. Paul natives, in speaking of their appearance on the rookeries during the last six years, says: "In my sixty-seven years' residence on the island, I never before saw anything like it."[3]

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[1] Vol. II, p. 39.
[2] Vol. II, p. 32.
[3] Vol. II, p. 19.
[4] Vol. II, p. 415.
[5] Vol. II, p. 74.

Number of dead pups in 1891.

At the request of Mr. Stanley Brown,[4] Dr. J. C. S. Akerly, then physician on St. Paul Island, examined a large number of the dead bodies, and after a careful and minute examination, which is fully detailed by him in his deposition,[5] gives it as his opinion "that the great mortality during 1891 amongst the young seals on St. Paul Island, Bering Sea, was caused by the deprivation of mothers' milk." He sums up this opinion with eight reasons why he believed the young seals died of starvation.[6] His opinion as to the cause of their death is shared by many others who had an opportunity to examine the dead and dying pups on the rookeries.[7] The natives on the islands,

Cause of death of pups.

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[1] Anton Melovedoff, Vol. II, p. 143: H. H. McIntyre, Vol. II, p. 51: Charles W. Price, Vol. II, p. 521; Aggie Kushin, Vol. II, p. 128; John Fratis, Vol. II, p. 108; H. N. Clark, Vol. II, p. 159.

[2] Milton Barnes, Vol. II, p. 101.

[3] Vol. II, p. 100.

[4] Vol. II, p. 19.

[5] Vol. II, p. 95.

[6] Vol. II, p. 96.

[7] W. H. Williams, Vol. II, p. 94; J. Stanley Brown, Vol. II, p. 19; Charles W. Price, Vol. II, p. 521; Aggie Kushin, Vol. II, p. 130; John Fratis, Vol. II, p. 109.

Cause of death of pups.

who have lived there for many years, testify that although they have eaten seal meat all their lives they never knew of a sick seal and never heard from the old residents of sickness among seals.[1] This great mortality, therefore, was not caused by an epidemic among the animals, for no dead adult seals were seen.[2]

Effects of pelagic sealing.

The injurious and destructive effects of open-sea sealing, as demonstrated above, can be summed up as follows: Between eighty and ninety per cent. of the seals taken are females; of these at least seventy-five per cent. are either pregnant or nursing; that the destruction of these females causes the death of the unborn pup seals or those on the rookeries dependent on their mothers for nourishment; and, finally, that at least sixty-six per cent. of the seals killed by white hunters are never secured. Besides this, the females taken in Bering Sea have certainly in the majority of cases been impregnated,[3] and their death means not only the destruction of the pups on the island, but also of the fetus. Hence, if 10,000 females are killed in one season, this fact means not only the depletion of the herd by at least 17,500 that

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[1] Anton Melovedoff, Vol. II, p. 143; See also Daniel Webster, Vol. II, p. 183; Edward Hughes, Vol. II, p. 37.

[2] Aggie Kushin, Vol. II, p. 128; Nicoli Krukoff, Vol. II, p. 133; Karp Buterin, Vol. II, p. 103; John Fratis, Vol. II, p. 107.

[3] *Ante*, p. 115.

Effects of pelagic sealing.

year, but also the reduction of the annual birth-rate by 7,500 each following year for probably fifteen years, besides the added loss of the young born to the female portion of the pups destroyed, which would be an ever increasing quantity. But disregarding these last two important points, the enormous destruction of seal life can be readily seen if we take the figures supplied by the Canadian Fisheries Report for 1890.[1] In that year there were sold in Victoria alone about 55,000 skins taken by pelagic sealers; allowing that 20,000 of these were secured by Indian hunters and only 35,000 by white hunters, the number of seals actually killed would be at least 125,000; of these 80 per cent., or 100,000, would be females and 75 per cent. pregnant or mothers, allowing one-half of these 75,000 pups thus destroyed by the death of the females to be of that sex, the total number of the producing sex killed would be 137,500, and the total loss to the herd of 200,000 seals, for which the sealers show but 55,000 skins. It must be remembered that 55,000 represented only the number of skins sold in Victoria, which is undoubtedly 10,000 short of the actual number secured by both the British and American sealing fleet. Each year also adds to the destructiveness of the fleet, for

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[1] Page 183.

Effects of pelagic sealing.

the captains in command becoming more and more familiar with the habits, track, and feeding-grounds of the migrating herd, are able to reach the various points off the coast at the time when the main body are at these localities, and harass them incessantly on their way from the Farallones to Bering Sea.[1] The effect of pelagic sealing is briefly and truly summarized by Karp Buterin, the native chief of St. Paul Island, in these words: "Schooners kill cows, pups die, and seals are gone."[2]

With such wasteful destruction the Alaskan seal herd must either be soon exterminated, or else a sufficient and full protection given from the pernicious methods employed by open-sea seal hunters.

## PROTECTION AND PRESERVATION.

### OTHER SEAL HERDS.

Destruction.

The indiscriminate slaughter of seals in the waters of the Pacific Ocean and Bering Sea can not fail to produce a result similar to that observed in the southern hemisphere, where the fur-seals have, except at a few localities, become,

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[1] Report of Capt. C. L. Hooper to the Treasury Department, dated June 14, 1892, Vol. I, p. 499.

[2] Vol. II, p. 103.

Destruction.

from a commercial point of view, practically extinct. A full account of the distribution and the destruction of the antarctic seal herds is given by Dr. Allen in his article found in the Appendix.[1] Captain Budington, who for over twenty years has sealed about Cape Horn and the islands of the South Atlantic, making his last trip to these regions in the winter of 1891–'92, says: "From hundreds of thousands of seals resorting to these islands and coasts the numbers have been reduced to a few hundred, which seek the land in scattered bands and rush to sea on the approach of man."[2] He further adds: "Seals in the antarctic regions are practically extinct, and I have given up the business as being unprofitable."[3] In speaking of the cause of this extermination, he says: "The seals in all these localities have been destroyed by the indiscriminate killing of old and young, male and female. If the seals in these regions had been protected and only a certain number of "dogs" (young males unable to hold their position on the beaches) allowed to be killed, these islands and coasts would be again populous with seal life. The seals would certainly not have decreased and would have

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[1] Article by Dr. Allen, Parts I and II, Vol. I, pp. 365, 393.
[2] Vol. II, p. 595. See also Isaac Liebes, Vol. II, p. 515.
[3] Vol. II, p. 595.

Destruction.

produced an annual supply of skins for all times."[1] James Kiernan, who about 1843 visited on a sealing voyage the east coast of Patagonia and the Falkland Islands, says: "These rookeries have since been destroyed through the constant hunting of seals."[2] Caleb Lindahl, also experienced in sealing in southern latitudes, in speaking of the destruction of seals at the South Shetland Islands, says: "If the seals on the South Shetland Islands had been protected I think they would have been there by the million, because in one year they took three hundred thousand seals from the Shetland Islands."[3] The same hunter also, in telling of a sealing expedition he made in 1891 to the south seas, says: "The seals are nearly all killed off down there, so that we got only about twenty skins. It is no use for vessels to go there sealing any more."[3]

The Russian herd.

The pelagic sealers of the North Pacific have not confined their operations to the eastern side of the Pacific Ocean, but have invaded the Russian waters, and the slaughter has already been carried on to such an extent in that locality that the Commander herd has begun to decrease in the same manner as the Alaskan herd.[4]

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[1] Vol. II, p. 595.

[2] Vol. II, p. 450.

[3] Caleb Lindahl, Vol. II, p. 456.

[4] Gustave Niebaum, Vol. II, p. 203.

British protection of the seal.

The necessity of protection to seal life from unlimited destruction, in order that the species may be preserved, is not only evidenced by the examples above cited, but has been recognized by a number of nations, especially by Great Britain and her colonies. In fact, it may be said that wherever fur-seals breed in territory over which Great Britain has control the species has received particular protection from indiscriminate slaughter. At the Falkland Islands, a British dependency, formerly so productive of the fur seal species, the Government of the Islands in 1881 issued a decree,[1] the preamble of which is as follows: "Whereas the Seal Fisheries of these Islands, which was at one time a source of profit and advantage to the colonists, has been exhausted by indiscriminate and wasteful fishing, and it is desirable to revive and protect this industry by the establishment of a Close Time during which it shall be unlawful to kill or capture seals within the limits of this Colony and its dependencies." The ordinance proceeds to enact stringent regulations prohibiting seal hunting "within the limits of this Colony and its dependencies." Capt. Budington, an experienced navigator and seal hunter in southern

Falkland Islands.

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[1] Falkland Islands Seal Fishery Ordinance, Vol. I, p. 435.

Falkland Islands.

waters, visited that region in January, 1892, and he states, under oath, that the ordinance of 1881 is enforced in the sea surrounding those islands outside the three-mile limit, and that it would be deemed a violation of the law to take seals during the close season between the Falkland Islands and Beauchene Island, twenty-eight miles distant.[1]

New Zealand.

During the past fifteen years a series of laws and orders in council have been enacted for the protection of seals in the Colony of New Zealand, which not only established a close season, but have at times entirely prohibited the taking of seals for a consecutive period of eight years.[2] The New Zealand Seal Fisheries Act of 1878 established a close season for seals extending from October 1 to June 1.[2] Section 4 empowers the Governor, by Order in Council, to extend or vary the close season as to "the whole Colony or only in particular parts thereof." And this provision has been substantially reënacted in all subsequent legislation. The area designated as "the Colony" is taken to mean the area

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[1] James W. Budington, Vol. II, p. 593.

[2] New Zealand Act, 1878, Vol. I, p. 437. See also Reports, Department of Marine (1880-1890), Regulations by the Governor of New Zealand in Council, January 10, 1888.

New Zealand.

specified in the act[1] creating the colony, which defines its boundaries as coincident with parallels 33° and 53° south latitude, and 162° east and 173° west longitude.[2] The Fisheries Act of 1884[3] empowers the Governor in Council "to make, alter, and revoke regulations which shall have force and effect only in waters or places specified therein ;" and almost unlimited authority is thus conferred upon the executive to establish close seasons, and to make regulations respecting the purchase or sale of fish, including seals, and punishment for violation of the law and orders. The definition in the act of the term "waters" indicates that it applies to the entire area of the Colony, of which the southeastern corner is over seven hundred miles from the coast of New Zealand, although a few smaller islands intervene. The Amendment Act of 1887,[4] making the penalties more stringent, provides (Sec. 6) that the commander of any public vessel may seize, search, and take any offending vessel

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[1] 26 and 27 Vic. c. 23, Sec. 2, Vol. I, p. 436; Extract. . . . "The Government purpose leasing the right to seal within the Colony of New Zealand, which extends within the area comprised between 162° east longitude and 173° west longitude, and between 33° and 53° of south latitude." From "Handbook of the Fishes of New Zealand." Prepared under the instructions of the Commissioner of Trade and Customs, by R. A. A. Sherrin. Auckland, 1886, p. 254.

[2] Map of Colony of New Zealand, Vol. I, p. 437.

[3] New Zealand Act, 1884, Vol. I, p. 437.

[4] New Zealand Act, 1887, Vol. I, p. 440.

New Zealand.

"within the jurisdiction of the Government of the Colony of New Zealand." The "Handbook of the Fishes of New Zealand," already cited, a book "prepared under the instructions of the Commissioner of Trade and Customs," reviews at some length the seal life and industry of the Colony, and in advocating stringent protection states that "seals are property the State should zealously guard." In pursuance of the foregoing cited laws and regulations the Government of New Zealand has kept a cruiser in service for some years for the purpose of patrolling the waters of the Colony and enforcing the law.[1] It is now proposed to lease the exclusive right to take seals within the limits of the Colony to a company.[2] In the Colony of the Cape of Good Hope sealing is prohibited at the rookeries and in the waters adjacent thereto, except under stringent regulations.[3] The laws and regulations of the British colonies just cited have reference to the fur-seals of the South Seas, similar in their habits to the seal herd of the Pribilof Islands,

Cape of Good Hope.

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[1] Reports, Marine Department of New Zealand, 1882, 1883, 1887, 1888.

[2] "Handbook of the Fishes of New Zealand," p. 254.

[3] George Comer, Vol. II, p. 597; William C. B. Stamp, Vol. II, p. 576.

having fixed habitations on the land, to which they regularly resort.[1]

Cape of Good Hope.

British protection of hair-seal.

But Great Britain and its dependencies do not limit their governmental protection to the fur-seal; it is extended to all varieties of seals, wherever they resort to British territorial waters, and they have thrown about them upon the high seas the guardianship of British statutes. In certain of the waters of the North Atlantic are found the hair-seal, of much less commercial value than the fur-seal, and to whose existence the land is not a necessity, as the young may be, and usually are, born and reared on the ice; and yet these seals are under the special protection of British laws. Canadian statutes prohibit all persons, without prescribing any marine limit, from disturbing or injuring all sedentary seal fisheries during the time of fishing for seals, or from hindering or frightening the shoals of seals as they enter the fishery. They also forbid the use of explosives to kill seals.[2]

Newfoundland regulations.

The most important hair-seal region of the world is found on the ice floes to the eastward of Newfoundland, often several hundred miles from the coast.[3] This region has been for many years

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[1] An examination of the "Handbook of the Fishes of New Zealand" (pp. 230–233) will show that the fur-seal frequenting those islands is similar in habits to the Alaskan fur-seal in nearly every particular.

[2] Revised Statutes of Canada, c. 95, Secs. 6 and 7; Vol. I, pp. 441, 454.

[3] Allen, "Monograph of North American Pinnipeds," page 234.

Newfoundland regulations.

past under the protection of the Newfoundland Colonial Government, which has enforced a close season, not allowing sail vessels to leave port on sealing voyages before March 1, and steam vessels before March 10, and prohibiting seal killing before March 12, under a penalty of from four hundred dollars to two thousand dollars, and has enacted other stringent regulations.[1] But even these laws have not proved sufficiently efficacious, and in April, 1892, a new act "to regulate the prosecution of the seal fisheries" was passed.[2] This act defers the date of leaving port two days and prohibits the killing of seals at all seasons of the year except between March 14 and April 20, inclusive. It is further made an offence to bring any seal killed out of season into any port of the Colony under a penalty of four thousand dollars, and all steamers are prohibited from proceeding on a second trip to the seal waters in any one year. It will be seen from the depositions of Richard Pike, a master mariner of forty-four years' experience in hair-seal hunting, and of James G. Joy, master mariner of twenty-four years' experience in seal hunting, that the law prohibiting the second sealing trip was enacted because it tended to the extermination of the hair-seals, as at least seventy-five per cent. of those killed on the second trip are females, and many at that time are shot in the water and sink before they can be recovered.[1]

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[1] Newfoundland Seal Act, 1879, Vol. I, p. 442.

[2] Newfoundland Seal Act, 1892, Vol. I, p. 444.

Newfoundland regulations.

Next in importance to the Newfoundland hair-seal region is that in the Atlantic Ocean east of Greenland, and known as the Jan Mayen Seal Fishery. This region in the open sea is embraced in the area lying between the parallels of 67° and 75° north latitude and the meridians of 5° east and 17° west longitude from Greenwich. These fisheries were made the subject of legislative regulation, applicable to their own subjects, by the Governments of Great Britain, Sweden and Norway, Russia, Germany, and Holland, by a series of statutes passed by these several countries during the years 1875, 1876, 1877, and 1878.[2] The 3rd of April is established as the earliest date each year on which the seals could be legally captured, and penalties are fixed for a violation of the prohibition.

Jan Mayen regulations.

It will thus be seen that not only Great Britain and her colonies have found it necessary to protect by legislation the hair-seal of the North

Concurrence nations.

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[1] James G. Joy, Vol. II, p. 591; Richard Pike, Vol. II, p. 592.

[2] "The Seal Fishery Act, 1875," 38 Vict., c. 18; British Order in Council of Nov. 28, 1876; Law of Sweden and Norway of May 18, 1876; Ordinance of Norway of Oct. 28, 1876; Ordinance of Sweden of Nov. 30, 1876; Law of Germany of Dec. 4, 1876; Ordinance of Germany of Mar. 29, 1877; Law of the Netherlands of Dec. 31, 1876; Decree of the Netherlands of Feb. 5, 1877; Law of Russia of Dec. 1878; Sec. 223 of Russian Code of Laws, 1886.

Concurrence of nations.

Atlantic from extermination, but that other nations have united and concurred in the same protection.

White Sea regulations.

Stringent regulation have also been adopted by Russia for the protection of the hair-seals in the Gulf of Mezen, a part of the White Sea, the greater portion of which is beyond the three-mile limit. All sealing is subject to the supervision of public overseers, who have authority to determine the time at which the annual catch is to begin at certain designated places, and to preserve order during the continuance of sealing operations, as to which the law contains certain prohibitions.[1]

Caspian Sea regulations.

The sealeries in that portion of the Caspian Sea which belongs to Russia are under the control of a " Bureau of Fishing and Sealing Industries," which is charged with a general supervision of the sealeries, and the enforcement of the law, which contains regulations for a close season, a license fee, and prohibition of killing or disturbance during the breeding time.[1]

Fur-seal protection by other nations.

Similar enactments protect the fur-seal in other portions of the world, as other nations have recognized how indispensable to the preservation of the fur-seal species is the prohibition of unlicensed and unlimited sealing. The Lobos

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[1] Code of Russian Laws, 1886, and map of area, Vol. I, p. 445.

Island rookeries have for over sixty years been protected by the Government of Uruguay, and the right of sealing leased to a company under certain restrictions;[1] and as a consequence of this governmental protection Lobos Islands have for many years past been the chief source of supply from the southern seas. The Governments of Chile and the Argentine Republic have also recently given protection to the fur-seals resorting to their coasts in the hope of restoring their almost exterminated rookeries.[2] The Japanese Government has taken steps toward the restoration and preservation of the fur-seals at the Kurile Islands,[3] and the history of Russian protection on the Commander Islands and Robben Island is too well known to need further citation.

Fur-seal protection by other nations.

Lobos Islands.

Cape Horne.

Kurile Islands.

Commander and Robben Islands.

### FISHERIES.

The foregoing review of the legislation of various nations shows that they have deemed it necessary to adopt stringent regulations, not only in waters adjacent to, but also at great distances from their respective land boundaries, in order to protect from extermination the fur and the hair-seal. But it will be interesting, and profitable for the purposes of this Arbitration, to carry the investigation of national legislation a step further and to examine how far Governments have gone in the protection of other forms of animal life in the water, and to what extent extra territorial jurisdiction is exercised for the preservation of national interests.

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[1] Summary of Uruguay laws, in letter of April 2, 1892, by the Custodian of Archives at Montevideo, Vol. I, p. 448; Article by Dr. Allen, Part II, Vol. I, p. 397.

[2] George Comer, Vol. II, p. 597.

[3] Statutes of Japan, Vol. I, p. 449.

Game laws.

All nations and races in all ages have recognized the necessity of affording sufficient protection for the reproduction and continued existence of all animal life useful to the human race. Even the savage recognizes and enforces this humanitarian and economic principle, but it is most fully recognized and enforced among civilized nations. An examination of the legislation of the countries of Europe and America shows that the protection of the Government is everywhere extended to animals *feræ naturæ* during the breeding season, and that especially the mother, when heavy with young or while her offspring is dependent upon her, is under the guardianship of the law. The wild animal on the land and the fish in the sea are both preserved by a close season and stringent rules, having particular reference to the reproduction and undiminished existence of the species. As indicating the character of this legislation, the attention of the Arbitrators is directed to a paper

Game laws.

in the Appendix, giving a brief review of the game and fishery laws of Great Britain and Canada.[1]

Extraterritorial jurisdiction.

Game and fishery laws are usually limited in their effects to the land and territorial waters of the country which enacts them. But instances are many wherein nations have not hesitated to extend the effects of their laws to the waters contiguous to their shores, beyond the ordinary three-mile limit. Citations have already been made of the laws for the protection of seals of quite a number of nations, which, so far as their own subjects are concerned, apply to large areas of the high seas, and it has been shown that Great Britain and Russia extend their exclusive jurisdiction for the protection of seals, frequenting waters contiguous to their shores, far beyond the marine league. But further instances may be cited where nations have exercised extraterritorial jurisdiction on the ocean for the protection of other species of marine life besides the seal. In fact, it may be laid down as a principle, established by international usage, that any nation which has a peculiar interest in the continued existence of any valuable marine product, located in the high seas adjacent to its coasts or

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[1] Game and Fishery Laws of Great Britain and Canada, Vol. I, p. 450.

Extraterritorial jurisdiction.

territorial waters, may adopt such measures as are essential to the preservation of the species, without limitation as to the distance from land at which such necessary measures may be enforced.

Irish oyster fisheries.

This principle is well illustrated by two recent statutes enacted by the Parliament of Great Britain. By the British "Sea Fisheries Act" of 1868[1] provision is made for the regulation of oyster dredging on any oyster bed within twenty miles of a straight line drawn from the eastern end of Lambay Island to Carnsore Point on the eastern coast of Ireland. The law states in terms that it is to be enforced "outside of the exclusive fishery limits of the British Isles," and that every order issued in pursuance of it shall be binding not only on British sea-fishing boats, but also "on any other sea-fishing boats in that behalf specified in the order and on the crews of such boats." In other words, jurisdiction may be asserted over foreigners as well as British subjects at a distance of twenty miles from land.

Scotch Herring Fishery Act.

The Scotch Herring Fishery Act of 1889[2] furnishes another illustration in point. That act provides that certain destructive methods of fishing may be prohibited by the fishery board in any part of an area of the open sea, two thousand seven hundred square miles in extent, lying off the northeast coast of Scotland, within a line drawn from Duncansbay Head, in Caithness, to Rattray Point, in Aberdeenshire." The act is not confined in its operations to British subjects, but provides that "any person" offending against its provisions shall be liable to a fine and the forfeiture of his fishing apparatus.

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[1] Statute of British Parliament, 31 and 32 Vict., c. 45, Sec. 67; map of area defined in the statute, Vol. I, p. 457.

[2] Statute, 52 and 53 Vict. c. 23 and map, Sec. 7, Vol. I, p. 458.

Scotch Herring Fishery Act.

The legislation of several of the colonies of Great Britain also abounds in instances of the exercise of extraterritorial jurisdiction upon the high seas for the protection of different species of marine life. The pearl fisheries of Ceylon extend into the open sea for a distance of twenty miles, and they have been the subject of a series of ordinances and regulations from 1811 down to the present time, which for certain purposes define the limit of marine jurisdiction to be twelve miles, and for other purposes a distance which varies from six to twenty miles.[1]

Pearl fisheries of Ceylon.

The pearl fisheries of Queensland and Western Australia were, in the years 1888 and 1889, made the subject of regulation by two statutes enacted by the Federal Council of Australasia.[2] These statutes extended the local regulations of

Pearl fisheries of Australia.

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[1] Ordinances of Ceylon, and map, Vol. I, p. 461.
[2] Statutes of Australasia, and map, Vol. I, p. 467.

Pearl fisheries of Australia.

the two countries mentioned to defined areas of the open sea, of which the most remote points are about two hundred and fifty miles from the coast of Queensland, and about six hundred miles from the coast of Western Australia. These acts are, by their terms, limited in their operation to British subjects, but as Sir George Baden-Powell has pointed out, in a recent address delivered before the Association of the Codification of the Law of Nations,[1] the remoteness of these waters renders it practically impossible for foreign vessels to participate in the pearl fisheries without entering an Australian port, and thereby rendering themselves amenable to Australian law.

French legislation.

The fishery legislation of France also recognizes the same principle. A commission, appointed by the French Government in 1849 to investigate the fisheries of that country and to make recommendations, reported that they deemed it inexpedient to assign any precise limit to territorial waters beyond which the laws recommended should cease to be operative.[2] Accordingly the laws passed in pursuance of this report were so framed as to leave this question open, and the Decree of May 10, 1862, Sec. 2,

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[1] Delivered at Liverpool, Aug. 29, 1890; see page 9.

[2] Rapport de la Commission du 25 juin, 1849, pour l'examen d'un projet de loi sur la pêche maritime côtière, p. 25.

French legislation.

went so far as to provide in terms that under certain circumstances fishing might be prohibited over areas of the sea beyond three miles from shore.[1] Numerous laws have also been enacted by France to protect and regulate the coral fisheries of Algeria, both as to natives and foreigners, and the coral beds so regulated extend at some points as far as seven miles into the sea.[2]

Italian legislation.

The coral beds surrounding the island of Sardinia and lying off the southwest coast of Sicily have been made the subject of elaborate regulations by the Government of Italy. The Sardinian coral beds are situated at distances from land which vary from three to fifteen miles.[3] The principal coral beds of Sicily are three in number, and are respectively distant from the coast fourteen, twenty-one, and thirty-two miles. At present all coral fishing is prohibited on these banks by Royal Decree, for a designated period,

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[1] French Decree and map, Vol. I, p. 469.

[2] Map, Vol. I, p. 469. "Les Pêches Maritimes en Algérie et en Tunisie." Rapport au ministre de la marine, par M. M. Bouchon Brandely, Inspecteur général des pêches maritimes, et A. Berthoule, Secrétaire général de la Société national d'acclimatation, membre du Comité consultatif des pêches maritimes.

[3] Map, Vol. I, p. 470. British admiralty chart No. 281. "Il Carallo in Sardegna, Relazione presentata à S. E. il ministro di Agricoltura, Industria e Commercio, dal Professore Parona Corrado, dell' Università di Cagliari." "Annali dell' Industria e del Commercio, 1882."

Italian legislation.

at the close of which the previous restrictive regulations will be again enforced.[1]

Norwegian legislation.

This principle is also recognized in the legislation of Norway in the statute of 1880 for the protection of whales, during an annual close season, in Varanger Fiörd, an arm of the open sea about thirty-two marine miles in width, lying off the northeast coast of Norway.[2]

Panama legislation.

The Government of Panama, in the Republic of Colombia, has recently enacted a law prohibiting the use of diving machines for the collection of pearls within an area of the sea over sixty marine miles in length, and extending outward about thirty marine miles from the coast.[3]

Mexican legislation.

The Mexican pearl fisheries lying off the coast of Lower California, have been made the subject of special exclusive grants to private individuals. Along part of the coast the pearl beds have been divided for this purpose into two belts, of which the inner belt extends seaward a distance of five kilometers (about three miles), and the outer belt is bounded by lines drawn parallel to the coast at distances of five and ten kilometers. It is obvious that the greater portion of this outside belt lies beyond the three-mile limit.[1]

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[1] Statutes of Italy, and maps, Vol. I, pp. 470, 472. "Relazione del Professore Giovanni Canestrini al Ministro di Agricoltura, Industria e Commercio Sulle ricerche fatte nel Mare di Sciacca intorno ai Banchi Corallini." "Annali dell' Industria e del Commercio, 1882."

[2] Statutes of Norway, Vol. I, p. 482.

[3] Statutes of Panama, and map, Vol. I, p. 484.

Mexican legislation.

Maps will be found in the Appendix, as cited, showing the extent of marine territory over which jurisdiction is exercised by the different Governments named. Reference may also be made to the British Hovering Acts,[2] the St. Helena Act of 1815,[3] and the Quarantine Act of 1825,[4] as well as various international conventions for the protection and regulation of fisheries on the high seas.

Other cases of exterritorial jurisdiction.

## ALASKAN HERD.

This hasty review of the legislation of near a score of nations clearly establishes the principle announced that any nation, having a peculiar interest in the continued existence of animal life in the high seas adjacent to its coasts or territorial waters, may adopt such measures as are essential to its preservation, without limit as to the distance from land at which such measures may be enforced. It is a remarkable fact, however, in view of the legislation just cited, that the Alaskan seal herd, so valuable to the human

Unprotected condition.

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[1] Statutes of Mexico, and map, Vol. I, p. 486.

[2] 9 Geo. II, c. 35, Sec. 23, statute repealed in 1825, but partially reenacted as to the limit of four leagues as recently as 1845, 8 and 9 Vict., c. 86, Sec. 2.

[3] 56 Geo. III, c. 23, Sec. 4, Vol. I, p. 495.

[4] 6 Geo. IV, c. 78, Secs. 8, 9, Vol. I, p. 496.

Unprotected condition.

race, stands almost alone in the animal life of the world in being denied protection during the necessary period of the reproduction of its species. The review of the habits of the Alaskan seal and of the practices of the pelagic hunters has shown that for at least nine months of the year this herd is exposed to the relentless and untiring pursuit of the pelagic hunter, and that during the remaining three months his hand is only stayed by the inclemency of the weather which renders pursuit impossible. And it has been further shown that this pursuit is most active and destructive at the time when the female seal is approaching the season of the delivery of her young, or when she is nursing the pup which is entirely dependent upon the mother's milk for sustenance.

Necessity of its protection.

The necessity of protection of this particular herd is affirmed by numerous witnesses of every degree of experience and knowledge, including leading naturalists of America and of many European nations, those engaged in the sealskin industry, both in the United States, Great Britain, and France, experienced sealers, and many others conversant with seal life and the present condition of the Alaskan herd.

The British and American Bering Sea Commissioners, although they do not assert in their joint report that protection is necessary, give, as a conclusion reached, the following: "We are in thorough agreement that for industrial as well as for other obvious reasons, it is incumbent upon all nations, and particularly upon those having direct commercial interests in fur-seals, to provide for their proper protection and preservation."[1]

**The Joint Commission.**

The British Government also has recognized the necessity of protecting this seal herd from destruction, in its correspondence with the Government of the United States, and has advocated certain methods of preservation through a close season and prohibition of sealing within certain limits.[2] Lord Salisbury, in 1888, so far recognized the need of protection to the seal herd as to suggest that a close season from April 15 to October 1 be established in the whole of Bering Sea and those portions of the Sea of Okhotsk and of the Pacific Ocean north of north latitude 47°, and that this limitation should be enforced by international agreement between the United

**British recognition.**

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[1] Joint Report of British and American Bering Sea Commissioners. *Post*, p. 309.

[2] Sir J. Pauncefote to Mr. Blaine, April, 1890; Marquis of Salisbury to Sir L. West, April 16, 1891; Sir J. Pauncefote to Mr. Wharton, June 11, 1891.

British recognition.

States, Great Britain, Russia, and other nations interested.[1]

Opinions of naturalists.

Professor Huxley.

Dr. Sclater.

Dr. Merriam's letter.

Professor T. H. Huxley, in considering this question of the decline of the Alaskan herd and the need of protecting it, says: "That the best course would be to prohibit the taking of fur-seals anywhere except on the Pribilof Islands."[2] Dr. Sclater, secretary of the Zoölogical Society of London, says "that in his opinion as a naturalist, unless proper measures are taken to restrict the indiscriminate capture of the fur-seal in the North Pacific he is of the opinion that the extermination of this species will take place in a few years, as it already has done in the case of other species of the same group in other parts of the world."[3] Dr. C. Hart Merriam, one of the Amercan Bering Sea Commissioners, sent out a letter to a number of the principal zoölogists and scientists of the world, stating briefly the results of his investigations as to the condition of the Pribilof rookeries and the cause of the decrease; the letter closes with the following conclusions; "It seems to be a fair inference, therefore, that the only way to restore the depleted rookeries to their former condition is to stop taking seals at sea, nd not only in Bering Sea, but in the North Pacific as well."[1] In replying to this communication, Dr. Raphael Blanchard, of France, says: "By reason of the massacres of which it is a victim, this species is advancing rapidly toward its total and final destruction, . . . and there is for our generation an imperious duty to prevent the destruction of the fur-seal, to regulate strictly its capture, in a word, to perpetuate this source of wealth and to bequeath it to our descendants."[2] Dr Henry H. Giglioli, of Italy, in his reply, says: "It is both as a naturalist and as an old Commissioner of Fisheries, that I beg to say . . . that I most entirely and most emphatically agree with you in the conclusions and recommendations you come to in your report on the present condition of the fur-seal industry in the Bering Sea, with special reference to the causes of decrease and the measures necessary for the restoration and permanent preservation of that industry, which conclusions and recommendations are fully supported and justified by the facts in the case."[3] Professors A. E. Nordenskiold and W. Lilljeborg, of Sweden, uniting in a reply to Dr. Merriam's letter, say: "As to the pelagic sealing it is evident that a systematic

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[1] Mr. White to Mr. Bayard, April 20, 1888; Marquis of Salisbury to Sir L. West, April 16, 1888.

[2] Vol. I, p. 412.

[3] Vol. I, p. 413.

**Dr. Merriam's letter.**

**Dr. Blanchard.**

**Dr. Giglioli.**

**Professors Nordenskiold and Lilljeborg.**

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[1] Vol. I, p. 417.

[2] Vol. I, p. 427.

[3] Letter of Dr. Henry H. Giglioli, Vol. I, p. 425.

Professors Nordenskiold and Lilljeborg.

hunting of the seals in the open sea on the way to and from or around the rookeries will very soon cause the complete extinction of this valuable, and, from scientific point of view, so extremely interesting and important animal."[1] Besides these declarations above quoted, other scientists, of France, Italy, Sweden, Russia, Germany, Austria, Norway, and Argentine Republic, to whom Dr. Merriam's letter was sent, unite in commending the conclusions set forth and affirm the need of protection to the seal herd.[2]

Other naturalists.

Dr. Allen.

Dr. Allen shows plainly the need of protecting the Alaskan herd, in a brief summary of the results of pelagic sealing.[3]

Canadian recognition.

In the Canadian Fisheries Report for 1886, already adverted to, Thomas Mowatt, Esq., Inspector of Fisheries for British Columbia, in his report, after giving the catch for the year by sealing vessels, and stating the fact that it was composed almost entirely of female seals, adds: "This enormous catch, with the increase which will take place when other vessels fitting up every year are ready will, I am afraid, soon deplete our fur-seal fishery, and it is a great pity such a valuable industry could not in some way be protected."

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[1] Letter of Professors Nordenskiold and Lilljeborg, Vol. I, p. 429.

[2] Letters of Dr. A. V. Middendorf, Dr. Emil Horub, Dr. R. Collett, Dr. Leopold Van Schranck, and others, Vol. I, pp. 418–433.

[3] Article by Dr. Allen, Part III, Vol. I, p. 410.

Canadian recognition.

Opinions of London furriers.

Mr. Walter E. Martin, head of the firm of C. W. Martin & Sons, already quoted, says "that the preservation of the seal herds found in the North Pacific regions is necessary to the continuance of the fur-seal business, as those herds are the principal sources of supply of sealskins left in the world, and from his general knowledge of the customs of that business deponent feels justified in expressing the opinion that stringent regulations of some kind are necessary in order to prevent those herds from disappearing like herds which formerly existed in large numbers in the South Pacific seas."[1]

Sir George Curtis Lampson, already mentioned as the senior member of the house of C. M. Lampson & Co., says that he "has no doubt that it is necessary in order to maintain the industry that steps should be taken to preserve the existence of the seal herd in the North Pacific Ocean and Bering Sea from the fate which has overtaken the herds in the south seas."[2] The said firm of Lampson & Co., in a letter to the Earl of Iddesleigh, First Lord of Her Majesty's Treasury, dated at London,

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[1] Walter E. Martin, Vol. II, p. 570.

[2] Sir George C. Lampson, Vol. II, p. 566.

Opinions of London furriers.

November 12, 1886, in relation, among other things to the preservation of the Alaskan herd, states that "should Great Britain deny the right of the United States Government to protect the (seal) fishery in an effectual manner there can be no doubt that the Alaska fur seals, which furnish by far the most important part of the world's supply of sealskins, will be exterminated in a very few years, just as in the South Atlantic, the Shetland and Georgia fur-seals, which used to furnish even finer pelts than the Alaskas, have already been."[1] Again, in September, 1890, Lampson & Co. wrote to the Foreign Office that "unless a close season can be arranged immediately the animal will undoubtedly become extinct within a very short time."[2] Mr. C. Hawkins, a British subject, in a letter already mentioned, addressed to the Marquis of Salisbury, states that "this wholesale slaughter of the females will, in a short time, bring about the extermination of the seal in that district if not arrested."[3]

Opinions of French furriers.

M. Léon Révillon, a member of the well known Parisian firm of Révillon frères, which has been engaged in the manufacture of sealskin garments for over twenty years, in speaking for his

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[1] British Blue Book, U. S. No. 2 (1890), C-6131, p. 24.
[2] British Blue Book, U. S. No. 1 (1891), C-6253, p. 11.
[3] British Blue Book, U. S. No. 3 (1892), C-6635, p. 5.

Opinions of French furriers.

company, says: "We firmly believe that if the slaughter of the Northwest Coast fur-seals is not stopped or regulated, the Alaska fur-seals will disappear entirely, as is the case with the seals of the Shetland Islands."[1] The same belief is also stated by M. Emin Hertz, head of the fur firm of Emin Hertz & Cie., which is located in the city of Paris. He says: "If this pursuit in the open sea continues as in the past two years, the said firm firmly believes that in a short time the seal will exist only as a souvenir and will be completely exterminated."[2]

Opinions of American furriers.

Mr. Elkan Wasserman, of San Francisco, who has been a furrier for thirty years, says: "From my knowledge of the sealing business, I am satisfied that the seals will be entirely exterminated unless protected from the indiscriminate pursuit in the waters that has been going on for the last few years."[3] Mr. C. A. Williams, one of the original members of the Alaska Commercial Company, formerly lessees of the Pribilof Islands, but no longer interested in those rookeries, says that if open-sea sealing continues the seals of Bering Sea will within five years be as extinct as the seals of the South Sea Islands.[4] And Mr.

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[1] Vol. II, p. 590.
[2] Vol. II, p. 588.
[3] Vol. II, p. 534.
[4] Vol. II, p. 538.

Opinions of American furriers.

Herman Liebes, already spoken of as being the largest purchaser of the Northwest catch at Victoria, British Columbia, places the time of extermination at three years unless the herd is protected from the depredations of pelagic sealers.[1]

Opinions of pelagic sealers.

Turning now to those still more conversant with the wasteful destruction of life through open-sea sealing, the resulting depletion of the Alaskan herd, and the probable effect of continuing pelagic hunting, the opinions already given are still further sustained. A great number of these men, sealers with more or less experience, unite in declaring the necessity of protecting the herd in order to preserve it from certain extermination in the near future. Alexander McLean was asked the question: "If sealing continues as heretofore, is there any danger of exterminating them [the seals]?" He replied: "If they continue as they have been since I have been in the business, I will give them ten years. After that the sealing business will be about finished."[2] Mr. Morris Moss, vice-president of the Sealers' Association of Victoria, British Columbia, says: "It is very important that if the fur seal is to be preserved, it must be protected from indiscriminate slaughter in the open sea or it will soon be

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[1] Vol. II, p. 514.

[2] Vol. II, p. 438.

Opinions of pelagic sealers.

exhausted."[1] John Morris, a sealer of experience, already mentioned, says: "With the present increasing fleet of sealing vessels the seal herd will soon become exterminated unless some restrictions are placed upon pelagic sealing."[2] William H. Long, who has been a hunter, a mate, and a captain on sealing vessels, says: "I think if something is not done to protect seals in the North Pacific and Bering Sea they will become exterminated in a very few years."[3] Caleb Lindahl, who has sealed both in arctic and antarctic seas, says: "If they keep on hunting them in the Bering Sea and the North Pacific, in the same way they have done in the last few years, they will exterminate them in the same way [as in the southern seas], because most all the seals killed are females."[4] To these statements might be added may others of those experienced in open-sea sealing.[5]

Opinions of Indian hunters.

The certainty of extermination of the herd if not protected is also set forth by many of the Indian hunters, whose long experience and careful observation of the condition of the migrating

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[1] Vol. II, p. 342.

[2] Vol. II, p. 340.

[3] Vol. II, p. 458.

[4] Vol. II, p. 456.

[5] Thomas Gibson, Vol. II, p. 432; A. J. Hoffman, Vol. II, p. 447; F. F. Feeney, Vol. II, p. 220; Luther T. Franklin, Vol. II, p. 426; O. Holm, Vol. II, p. 368; Martin Benson, Vol. II, p. 406.

Opinions of Indian hunters.

herd from year to year make them fully competent to give an opinion of value and weight. Alfred Irving, a Makah Indian hunter, says: "If they keep on killing them with guns there will be none left in a little while.[1] Selwish Johnson, of the same tribe, says: "If hunted with guns they will all soon be destroyed."[2] Gonastut, an Indian belonging to the Yakutat tribe, after stating that seals are becoming very scarce, gives as a reason that too many schooners are hunting them, adding "Seals will soon be no more unless the Great Father stops the schooners from hunting."[3] And a great many more Indians make like statements.[4]

Opinions of other witnesses.

Other witnesses, who are thoroughly familiar with the habits and nature of the Alaskan fur-seals, or who have had ample opportunity to examine the constant decrease and compare it with the known facts and figures of pelagic sealing and its increase, give like opinions as to the need of protection if the seals are to be preserved.[5] Mr Maxwell Cohen says: "After twenty-two years' experience in Alaska in the fur business, I

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Vol. II, p. 387.

[2] Vol. II, p. 389.

[3] Vol. II, p. 238.

[4] Peter Brown, Vol. II, p. 378; Thomas Zolnoks, Vol. II, p. 399; Charles Martin, Vol. II, p. 297.

[5] Samuel Falconer, Vol. II, p. 162; M. A. Healy, Vol. II, p. 28; A. P. Loud, Vol. II, p. 39; H. G. Otis, Vol. II, p. 88; Wm. H. Williams, Vol. II, p. 94; Aggie Kushin, Vol. II, p. 130; C. M. Scammon, Vol. II, pp. 475, 476.

Opinions of other witnesses.

have no hesitation in saying that if the fur-seal species is to be saved from extinction, all pelagic sealing must cease."[1] Dr. H. H. McIntyre, after twenty years of careful study of the habits and condition of the seal herd, necessitated by his position as resident superintendent of the Alaska Commercial Company on the Pribilof Islands, says: "I am fully convinced, from my knowledge of seal matters, that if this indiscriminate and reckless destruction of the Pribilof seal herd continues as it has done in the past six years in Bering Sea and the North Pacific, the seals will be practically exterminated in a very few years, even if the United States Government should not allow any seals to be taken on the Pribilof Islands, for the destruction of females in the water has reached a number that can not be met by the annual increase."[2]

Conclusions.

The facts thus submitted are, that the Alaskan seal herd has decreased to a great extent in the last few years; that the sole cause of such decrease has been the indiscriminate and wasteful slaughter of seals in the open seas, particularly pregnant and nursing females; that if such destruction continues the northern fur-seal will be practically exterminated; and that both from

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[1] Vol. II, p. 225.
[2] Vol. II, p. 46.

Conclusions.

a scientific point of view and from actual experience it is necessary to protect the seal herd from this means of slaughter in order to preserve the species.

Means necessary.

Upon the question what are the restrictions or prohibitions needful to accomplish the desired results, it is only necessary to consider those applicable to open-sea sealing, for it has already been shown that regulations can be enforced upon the Pribilof Islands so that a certain number of young male seals can be taken annually on the islands for an indefinite period without decreasing or impairing the normal condition of the herd, and this is particularly shown by the American Commissioners and various witnesses.[1] As to what restrictions are necessary to be enforced in relation to pelagic sealing, the opinions naturally vary according to the knowledge, prejudice, or conclusions of the individual. These opinions may be placed in two classes, absolute prohibition and limited prohibition. Naturally, the majority of those whose interests would be affected by an absolute prohibition of open-sea sealing in all waters frequented by the Alaskan herd, will be found affirming the need of a

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[1] Report of American Bering Sea Commissioners, *post*, p. 352; H. H. McIntyre, Vol. II, p. 45; William H. Williams, vol. II, p. 94; George Wardman, vol. II, p. 179; W. H. Dall, vol. II, p. 24.

Means necessary.

limited prohibition, while those who are unbiased by interest or who desire the preservation of the seal declare that absolute prohibition only can accomplish its preservation.

Absolute prohibition of pelagic sealing.

Mr. Philip Lutley Sclater, Ph. D., secretary of the Zoological Society of London, says that in his opinion as a naturalist, "unless proper measures are taken to restrict the indiscriminate capture of the fur seal in the North Pacific the extermination of this species will take place in a few years, as it has already done in the case of other species of the same group in other parts of the world;" that "it seems to him that the proper way of proceeding would be to stop the killing of females and young of the fur-seal altogether, or as far as possible, and to restrict the killing of the males to a certain number in each year;" and that "the only way he can imagine by which these rules could be carried out is by killing the seals only on the islands at the breeding time (at which time it appears that the young males keep apart from the females and old males), and by preventing altogether, as far as possible, the destruction of the fur-seals at all other times and in other places."[1] Professor Dall, whose opinion must necessarily be con-

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[1] P. L. Sclater, Vol. I, p. 413. See also quotation from Prof. T. H. Huxley, *ante*, p. 240.

Absolute prohibition of pelagic sealing.

sidered as entirely unbiased, unless a scientific interest can be regarded as a bias, says: "Upon the amount of protection depends the safety of the seal herd in the future. If protected only upon the Pribilof Islands, extermination will be rapid; if they are protected upon the islands and in the waters of Bering Sea also, the decrease will be slower, but ultimate extinction will probably follow. To preserve them completely it is necessary that they should be protected in all waters which they frequent at all times."[1] Mr. C. A. Williams, whose long experience in the fur business has made him thoroughly competent to speak on this question, and whose interest is no longer affected by the preservation of the seal herd, says that he "regards it as important that the seal herd should be protected . . . in the North Pacific, as otherwise they will be exterminated, even if sealing be prohibited in the Bering Sea."[2] Dr. H. H. McIntyre says: "In my judgment the seals should be protected in Bering Sea and the North Pacific, and that pelagic sealing should be entirely prohibited in said waters."[3] Mr. Alfred Fraser, already mentioned as a British subject, whose interests are entirely with the continuance of the sealskin industry in London, says "that, in his judgment, the absolute prohibition of pelagic sealing, *i.e.*, the killing of seals in the open sea, whether in the North Pacific or the Bering Sea, is necessary to the preservation of the seal herds now surviving."[1] Besides the statements given above, many other witnesses express the same opinion.[2]

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[1] Vol. II, p. 24.
[2] Vol. II, p. 538.
[3] Vol. II, p. 46.

Absolute prohibition of pelagic sealing.

Those asserting the need of only a limited prohibition are divided in their views as to the means necessary, some advocating a close season, in which all killing of seals should be prohibited, others that the use of firearms in taking seals should be forbidden, others that the seal herd should not be molested in the waters of Bering Sea, and still others who believe that a zone about the islands of from thirty to fifty miles would be sufficient.

Limited prohibition of pelagic sealing.

The first of these propositions is supported by a number of sealers, but the period of time in which pelagic sealing should be prohibited varies. Daniel Claussen advocates a close season from July 1 to the last of October;[3] Arthur Griffin, from April to September 1, inclusive;[4] Joshua

A close season.

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[1] Vol. II, p. 557.

[2] W. C. Coulson, Vol. II, p. 416; T. F. Ryan, Vol. II, p. 175; J. H. Moulton, Vol. II, p. 73; W. B. Taylor, Vol. II, p. 177; B. F. Scribner, Vol. II, p. 90; T. F. Morgan, Vol. II, p. 65; Gustave Isaacson, Vol. II, p. 440; J. A. Bradley, Vol. II, p. 227; H. W. McIntyre, Vol. II, p. 138.

[3] Vol. II, p. 412.

[4] Vol. II, p. 326.

A close season.

Stickland, from May 1 to September 15;[1] Frank Johnson from the 1st of July to the end of the year;[2] G. E. Miner, from January 1 to August 15.[3] James Kiernan says the seals should be protected from February until October,[4] and Isaac M. Lenard, from February to November.[5] Thomas Brown (No. 1.) says that in order to prevent the extermination of seals the hunting of them should be prohibited until after the mother seals give birth to their young;[6] which opinion is also advanced by Capt. Victor Jackobson.[7] William Short says that sealing should be prohibited in the North Pacific before the middle of June.[8] And Charles Peterson says: "The practice of taking seals in the water before they give birth to their young is destructive to seal life and should be prohibited."[9]

A close season impracticable.

A glance at the above opinions of those who have been or are engaged in pelagic sealing is sufficient to show that a close season cannot accomplish the preservation of the seal, for, taken

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[1] Vol. II, p. 350.
[2] Vol. II, p. 441.
[3] Vol. II, p. 467. See also George Dishow, Vol. II, p. 323.
[4] Vol. II, p. 451.
Vol. II, p. 217.
[6] Vol. II, p. 319.
[7] Vol. II, p. 328.
Vol. II, p. 348.
[9] Vol. II, p. 346.

A close season impracticable.

collectively, every month in the year is comprised in the statement of one sealer or another, evidently showing that in every month the seal herd needs protection. Dr. George Dawson, one of the British Bering Sea Commissioners, in an article entitled "Note on the Question of Protection of the Fur-Seal in the North Pacific," which was inclosed in a communication from Sir Julian Pauncefote to Mr. Blaine, dated March 9, 1890, says: "The circumstance that the female fur-seal becomes pregnant within a few days after the birth of its young, and that the period of gestation is nearly twelve months, with the fact that the skins are at all times fit for market (though for a few weeks, extending from the middle of August to the end of September, during the progress of shedding and renewal of the longer hair, they are of less value), show that there is no natural basis for a close season generally applicable."[1] And Sir George Baden-Powell, the other British Bering Sea Commissioner, in a letter to the London Times, published Saturday, November 30, 1889, opposes a close season for all months excepting July, August, and September, on the ground that "the Canadian sealers commence sealing in December and seal contin-

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[1] Sir Julian Pauncefote to Mr. Blaine, March 9, 1890, inclosure No. 4.

A close season impracticable.

uously from then till August." Professor Huxley also says: "In such a case as this I do not believe that the enforcement of a close time, either in Bering Sea or on the Northwest Coast, would be of any practical utility, unless the fishing is absolutely prohibited."[1]

Prohibition of use of firearms.

The second means of protection, the prohibition of the use of firearms, is naturally advanced by the Indian hunters.[2] It is but necessary to recall the fact that with less than twenty vessels engaged in sealing during the years from 1880 to 1885, when spears were practically the sole weapon used in the chase, the seals ceased to increase.[3] If, then, the present fleet of over a hundred vessels carried only Indian hunters it is evident the seals would still decrease, for the catch of the Indian, like that of the white man, is composed of the same proportion of female seals and is entirely indiscriminate.[4]

Prohibition of pelagic sealing in Bering Sea.

The third proposition is to close Bering Sea from the invasion of sealing vessels.[5] The same suggestion made on the last point stated, that the seals ceased to increase from 1880 to 1885, with

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[1] Statement of Prof. T. J. Huxley, Vol. I, p. 412.

[2] Twongkwak, Vol. II, p. 246; King Kooga, Vol. II, p. 240. See also F. R. King-Hall, Vol. II, p. 334.

[3] *Ante*, p. 165.

[4] Michael Wooskoot, Vol. II, p. 275; Kobert Kooko, Vol. II, p. 296; Jack Shucky, Vol. II, p. 289; Charlie Tlaksatan, Vol. II, p. 270.

[5] William H. Smith, Vol. II, p. 478.

Prohibition of pelagic sealing in Bering Sea.

less than twenty vessels in the business, is applicable to this method of protection; for, as has already been stated, the sealing vessels at that time seldom entered Bering Sea, confining their operations almost entirely to the North Pacific,[1] and therefore a large increase in the fleet, even though excluded from that sea, would ultimately cause the practical extinction of the herd. The British Government, through its Minister to the United States, Sir Julian Pauncefote, in April, 1890, submitted proposals for a convention, in relation to the sealing industry in Bering Sea and the Sea of Okhotsk, in which Great Britain, Russia, and the United States should join. In these proposals the area suggested to be closed included not only Bering Sea, but a considerable portion of the Pacific Ocean south of the Alaska Peninsula and the eastern Aleutian Passes.[2] And in the earlier correspondence Great Britain even proposed to extend the legislative protection as far south as the forty-seventh parallel.[3]

Sir George Baden-Powell, one of the British Bering Sea Commissioners, in an article which was published in "The New Review," February,

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[1] *Ante*, p. 166.

[2] Letter of Sir J. Pauncefote to Mr. Blaine, dated April —, 1890, inclosure 1.

[3] Mr. White to Mr. Bayard, April 20, 1888; Marquis of Salisbury to Sir L. West, April 16, 1888. See also Sir Julian Pauncefote to Mr. Wharton, June 11, 1891.

Prohibition of pelagic sealing in Bering Sea.

1891, says: "Effectively to protect the industry one would have to include all the Pacific Ocean and coasts thereof to north of, say, latitude 50 deg."[1] Great Britain has therefore conceded that the seal herd needs protection outside Bering Sea during the greater portion of its migration.

Prohibition of pelagic sealing within a zone.

The fourth and last means of a limited prohibition proposed is to draw an imaginary line about the islands within which open-sea sealing should be prohibited. The distance suggested as a radius for such a zone about the Pribilof Islands varies from twenty-five[2] or thirty[3] to fifty miles.[4]

Courses of sealing vessels.

To show how ineffective such a means of protection would be it is but necessary to examine the charts showing the courses of sealing schooners seized in Bering Sea in 1887, which have been platted, from the original log books of the vessels in the possession of the United States Government, by the Bureau of the United States Coast and Geodetic Survey and which have been

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[1] "The Bering Sea Dispute: A Settlement," by Sir George Baden-Powell, Vol. I, p. 589.

[2] Lord Stanley of Preston to Lord Knutsford, Feb. 28, 1892, British Blue Book, U. S. No. 1 (1892) C–6633, No. 5, p. 2.

[3] Henry Poland, Vol. II, p. 572; Sir J. Pauncefote to the Marquis of Salisbury, Feb. 26, 1892, British Blue Book, U. S. No. 1 (1892), C–6633, No. 8, p. 3.

[4] Morris Moss, Vol. II, p. 342.

Courses of sealing vessels.

certified to by the Chief of that Bureau. An examination of the course of the British schooner *Ada*, of Victoria, British Columbia, will at once prove the inefficacy of a zone as a means of protection, for it is there shown that within a given area the nearest point of which is one hundred and thirty-seven miles from the islands the catch for thirteen days was seven hundred and forty-seven seals, while in a given area nearly one hundred miles nearer the Pribilof Islands the catch for eighteen days was but five hundred and fifty-six; and, further, that at no time was the vessel within forty-five miles of the seal rookeries.[1] The course of the British schooner *Alfred Adams* shows the nearest point to the islands where seals were taken by her in 1887 was about sixty miles south of St. George Island, and that the majority of her catch was made one hundred and twenty-five miles from the islands.[2] The schooner *Ellen* never came within one hundred and sixteen miles of the rookeries on the islands,[3] and the schooner *Annie's* nearest approach to the islands was seventy-seven miles, her usual distance being over one hundred and fifty miles therefrom.[4] Edward Shield, of Sooke

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[1] Chart of course of schooner *Ada*, Vol. I, p. 574.

[2] Chart of course of schooner *Alfred Adams*, Vol. I, p. 543.

[3] Chart of course of schooner *Ellen*, Vol. I, p. 525.

[4] Chart of course of schooner *Annie*, Vol. I, p. 531.

Courses of sealing vessels.

District, Vancouver Island, one of the hunters on board the British schooner *Carolina*, seized by Captain Abbey, United States Revenue Marine, in 1886, says: "During the time while we were cruising about we were in the open sea out of sight of land."[1] Much other testimony of the same nature might be advanced, but it will be sufficient to mention only the declarations of James Douglas Warren as to the places of seizure in the cases of the *W. P. Sayward*, *Grace*, *Anna Beck*, *Dolphin*, *Alfred Adams*, and *Ada*, vessels seized by the United States Government in 1887, the distance given shows how the seals wander many miles from land, for in all cases Mr. Warren states the vessel was engaged in sealing at the distances given: the *W. P. Sayward* about fifty-eight miles from Unalaska, the nearest land;[2] the *Grace* about ninety-two miles from Unalaska, the nearest land;[3] the *Anna Beck* about sixty-six miles from the nearest land;[4] the *Dolphin* about forty-two miles from Unalaska Island, the nearest land;[5] the *Alfred Adams* about sixty-two miles from Unalaska Island, the nearest land,[6] and the *Ada* about fifteen miles

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[1] British Blue Book, U. S. No. 2 (1890), C-6131, p. 8.

[2] *Ibid.*, p. 145.

[3] *Ibid.*, p. 148.

[4] *Ibid.*, p. 152.

[5] *Ibid.*, p. 156.

[6] *Ibid.*, p. 160.

Courses of sealing vessels.

northward from Unalaska Island, which said island was the nearest land."[1]

Sir George Baden-Powell, in the article published in the "London Times," already referred to, says: "As a matter of fact the Canadian sealers take very few, if any, seals close to these (the Pribilof) islands."

Fogs in Bering Sea.

The American Commissioners in their report, after speaking of the absurdity of such a proposed method of protection, say: "There is almost constant cloudiness and dense fog, and it is difficult for a vessel to know her own location within reasonable limits after having cruised about for a short time. A margin of uncertainty would be nearly as wide as the zone itself. . . . In most cases it would be difficult to prove that the sealer was actually within the forbidden area."[2] Captain Shepard, of the United States Revenue Marine, who seized a number of vessels in 1887 and 1889, while engaged in sealing in Bering Sea, says: "It is my opinion that should pelagic sealing be prohibited in a zone thirty, forty, or fifty miles about the Pribilof Islands, it would be utterly useless as a protection to seal life, because female seals go much farther than that

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[1] British Blue Book, U. S. No 2 (1890), C-6131, p. 161. See also William H. Smith, Vol. II, . 478; Fred Smith, Vol. II, p. 349.

[2] Report of American Bering Sea Commissioners, *post*, p. 376.

Fogs in Bering Sea.

in search of food, and because fogs are so prevalent about those islands that it would be impossible to enforce any such prohibition."[1] Captain Abbey, also of the United States Revenue Marine, who seized several sealing vessels in 1886 in Bering Sea, says: "Fogs are almost constant in Bering Sea in the summer time. During the fifty-eight days I cruised in those waters fifty-four days were foggy and rainy, the other four days partly clear. On this account it is most difficult to seize vessels in Bering Sea. The reports of the guns of the hunters might often be heard when no vessel could be seen. For fifteen or twenty days at a time I did not see the sun, and never while in Bering Sea did I see a star, the nights being continually overcast and foggy."[2] Captain Bryant, already mentioned as the Government agent on the Pribilof Islands from 1870 to 1877, and who prior to that time had been captain of a whaling vessel which for several years had been in Bering Sea, says: "A zone thirty, forty, or fifty miles about the island in which sealing is prohibited would be of little or no protection, as the females, during the breeding season after their pups are born, wander at intervals over Bering Sea in search of food. But, to suppose an impossibility, even if

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[1] Vol. II, p. 189.
[2] Vol. II, p. 186.

Fogs in Bering Sea.

such a zone could protect seal life, it would be impossible, on account of the atmosphere being so constantly foggy and misty, to prevent vessels from crossing an imaginary line drawn at such a distance from and about the Pribilof Islands.[1] Others also consider this question of a protecting zone and give the same opinion as the witnesses quoted above.[2] Commander Charles J. Turner, of Her Majesty's cruiser *Nymphie*, which was in Bering Sea in 1891, states that "the weather experienced on the whole was very foggy and rainy, and the fogs greatly aided the sealing schooners in escaping observation."[3] And Lord Salisbury, in discussing the possibility of limiting sealing to one side of a line drawn through the sea, says "that if seal hunting be prohibited on one side of a purely imaginary line drawn in the open ocean, while it is permitted on the other side of the line, it will be impossible in many cases to prove unlawful sealing, or to infer it from the possession of skins or fishing tackle."[4] And the soundness of this statement is still more evident when such an imaginary line is almost continually enveloped in fogs and mists.

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[1] Vol. II, p. 9.

[2] H. H. McIntyre, Vol. II, p. 46; A. P. Loud, Vol. II, p. 39; George Wardman, Vol. II, p. 179; H. W. McIntyre, Vol. II, p. 138; H. N. Clark, Vol. II, p. 160.

[3] British Blue Book, United States No. 3 (1892), C–6635, p. 115.

[4] Sir Julian Pauncefote to Mr. Wharton, June 6, 1891 (Inclosure.)

Absolute prohibition of pelagic sealing necessary.

After a careful consideration of the four methods of limited protection proposed above, it is evident that none of these can preserve the Alaskan seal herd from certain destruction in the near future, no matter how stringently they may be enforced. The result, therefore, of this consideration is, that, if it is deemed necessary or expedient from a practical and commercial point of view to preserve the seal herds of the North Pacific and Bering Sea, pelagic sealing in every form and in all waters must be absolutely prohibited at all times.

## THE SEALSKIN INDUSTRY.

### IN THE PAST.

The commercial value of the Alaskan seal herd, which needs the protection already shown in order to preserve it from practical extinction, is evident on an examination of the sealskin industry as it formerly existed and as it is at the present time.

Sources of supply.

Formerly—that is, prior to the American occupation of Alaska and Bering Sea, the great sources of supply for fur-seal skins were in both the southern and northern hemispheres. Among those located in the antarctic regions, and from

Sources of supply.

which hundreds of thousands of skins were taken in the early part of this century were Sandwichland, South Shetland Islands, Desolation Island, Gough's Island, Kerguelen Island, Massafuero Island, San Juan Fernandez Island, the Falkland Islands, Tierra del Fuego, Patagonia, Cape Horn, South Georgia Islands, the Crozets,[1] the Cape of Good Hope, New Zealand, and other localities described by Dr. Allen.[2]

It has already been shown how completely these antarctic rookeries have been depleted,[3] but an instance of the enormous numbers taken by sealers in a short time, which shows how populous these southern coasts and islands had once been in seal life, is found in the case of the South Shetlands, where three hundred and twenty thousand skins were taken in two years (1821–1823),[4] and also in the case of Massafuero, from which island there were shipped to Canton in seven years over three million fur-seal skins.[4] Besides the antarctic sources of sealskins there were those which may be called subtropical, consisting of the Guadalupe and Galapagos

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[1] Emil Teichmann, Vol. II, p. 577; James W. Budington, Vol. II, pp. 593–594; George Fogel, Vol. II, p. 424; C. A. Williams, Vol. II, p. 536; George Comer, Vol. II, p. 596; Alfred Fraser, Vol. II, p. 555.

[2] Article by Dr. Allen, Parts I and II; Vol. I, pp. 375, 394.

[3] *Ante* p. 218.

[4] C. A. Williams, Vol. II, p. 541.

Sources of supply.

Islands, Lobos Islands,[1] St. Felix and St. Ambrose Islands,[2] the depleted condition of all which is well known, except Lobos Island, which, as before shown, has been long protected by the Uruguayan Government.[3] The arctic supply was, as now, the Pribilof Islands, the Commander Islands, Robben Reef, and the Kurile Islands, all these except the last mentioned being directly under the control and management of the Russian American Company

Markets.

Prior to 1870 all the fur-seal skins save a few thousand were marketed and sold in China, where the skins were plucked,[4] the commercial value being about five dollars in that country and something less in Europe;[1] but the supply being so irregular the market price fluctuated so that a cargo of skins was sometimes sold as low as fifty cents per skin.[5] Russia also received a portion of the supply obtained by the Russian American Company.[6] A few skins, however, were purchased in England by J. M. Oppenheim & Company,[1] and in the fifties New York[2] also received a supply from the Russian American Company, but it was not until the lease of the Pribilof Islands to the Alaska Commercial Company in 1870, and through the united efforts of that Company with C. M. Lampson & Company that the sealskin industry received the impetus which has built it up to its present condition.[3] At the same time the methods of dyeing and dressing the skins were perfected through the same agency, and sealskins made an article of fashion in general use in Europe and America, and became much more valuable as merchandise.[4]

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[1] C. A. Williams, Vol. II, p. 542.

[2] Article by Dr. Allen, Parts I and II, Vol. I, pp. 371, 393; Gaffney, Vol. II, p. 430.

[3] Emil Teichmann, Vol. II, p. 578; Alfred Frazer, Vol. II, p. 556; Uruguayan documents, Vol. I, p. 448.

[4] Emil Teichmann, Vol. II., p. 577; C. A. Williams, Vol. II, p. 541; Letter from the Board of Administration of the Russian American Company to General Manager Baranof, dated April 6 (18), 1817, Vol. I, p. 80.

[5] *Ibid.*, Vol. II, p. 542.

[6] Letter from Board of Administration of Russian American Company to Captain Rudakof, dated April 22 (May 4), 1853, Vol. I, p. 82.

Markets.

### IN THE PRESENT.

As a result of these endeavors and the increased prices, London has become practically the sole market in which the skins of the fur-seal are sold, and buyers gather there semiannually from different countries to purchase the skins,[5] which, to the number of one hundred and fifty thousand or more, are sold at public auction.[6]

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[1] Walter E. Martin, Vol. II, p. 567.

[2] Letter to the Board of Administration of the Russian American Company from the chief manager of the Russian American Colonies, dated November 8 (20), 1854, Vol. I, p. 83.

[3] Emil Teichmann, Vol. II, p. 582.

[4] C. A. Williams, Vol. II, p. 546.

[5] *Ibid.*, Vol. II, p. 546; G. C. Lampson, Vol. II, p. 564.

[6] H. S. Bevington, Vol. II, p. 552.

**Sources of supply.**

The principal sources of supply for seal skins at the present time are, first, the Pribilof Islands; second, the Commander Islands; third, the Northwest or Victoria catch.[1] A small supply is also received from Lobos Islands, Cape Horn, the Falklands,[2] and Australasia.[3]

**Dependence on Alaskan herd.**

The tables attached to the affidavit of Mr. Emil Teichmann, of the firm of C. M. Lampson & Company, show that the Pribilof Islands have, since their lease to the Alaska Commercial Company, and until the year 1890, supplied on an average over one-half of the skins sold annually in London; that, including the Northwest catch, the Alaskan herd has produced over sixty per cent. of the world's supply, and that the two great herds of the North Pacific and Bering Sea, which are both threatened with extermination by pelagic sealing, are the source of over eighty per cent. of the skins annually offered for sale at London. In 1889, the last year in which one hundred thousand seals were taken on the Pribilof Islands, the number of skins derived from these two herds was ninety-four per cent. of the whole supply, not twelve thousand skins being obtained from other sources.[4] From the foregoing it is evident that the destruction of the

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[1] Emil Teichmann, Vol. II, p. 579.
[2] H. S. Bevington, Vol. II, p. 551.
[3] Emil Teichmann, Vol. II, p. 578.
Emil Teichmann, Vol. II, p. 585.

Alaskan herd means practically the annihilation of the seal-skin industry of the world. Therefore, the extent and value of this industry, the consequent loss in case pelagic sealing is not prohibited, besides the loss to the United States Government by destruction of the seal herd, are matters for consideration in this connection.

Dependence on Alaskan herd.

### LOSS IF HERD DESTROYED.

Loss to United States.

Under the present lease of the Pribilof Islands the United States Government derives a revenue on each raw skin taken on the islands of over ten dollars;[1] and under the same conditions which existed prior to the introduction of pelagic sealing, as it is now carried on, 100,000 seals could be annually taken upon the Pribilof Islands, as has been shown, without impairment of the seal herd.[2] The annual revenue from this source to the United States would, therefore, be over $1,000,000. Besides this profit the United States Government received a further revenue from Alaskan seals reshipped to America from England. At least seventy per cent. of the Alaska skins are imported into the United States after being dressed and dyed in the city of London.

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[1] Lease to North American Commercial Company, Vol. I, p. 106.

[2] *Ante*, p. 164.

Loss to United States.

C. M. Lampson & Company, in a letter to the British Foreign Office dated December 30, 1890, state: "For many years past no less than 75 per cent. have been bought for American account and reshipped to the United States after having been manufactured in London."[2] This statement is corroborated by seven of the principal fur merchants in the United States, who place the number of "Alaskas" imported at from 65,000 to 75,000.[2] The value of these skins before paying custom duty to the United States is shown to average for a series of years about $25 per skin.[2] On these importations the Government of the United States received a duty of 20 per cent. ad valorem, or an annual revenue from duties on dressed and dyed Alaskan skins amounting to the sum of $375,000, which makes the total annuity of the United States Government, derived from the Alaskan Seal herd, at least $1,375,000, provided the usual quota of skins are taken by the lessees of the Pribilof Islands. In the United States these imported dressed and dyed skins are remodeled and manufactured into sealskin articles, for which the people so employed receive on an average $7 a skin, or for the 70,000 skins so

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[1] British Blue Book, U. S. (No. 18 191), C-6253, p. 11.

[2] Statement of American industry by furriers, Vol. II, p. 526.

Loss to United States.

imported annually the sum of $490,000.[1] When to this is added the profits to the wholesale and retail furriers and merchants engaged in the sealskin industries in the United States, which, according to the American furriers quoted above, are about $30 a skin, or on the 70,000 skins annually imported $2,100,000,[1] the total amount received each year in the United States from the manufacture and sale of Alaska skins aggregates $2,590,000. The average price per skin for "Alaskas" in the London Market for the last ten years, when the lease to the Alaska Commercial Company was in force (1880–1889) and when 100,000 seals were taken annually, was 68*s.* 8*d.*[2] or (allowing 24.3 cents to the shilling) about $16.50. The present lessees, under a normal condition of affairs, might expect a similar price. In procuring the skins they pay the United States $9.62½ on each secured, and the $60,000 rent adds 60 cents more on each skin; allowing $3 per skin for wages of employés, transportation, etc., the cost of a raw Alaska skin delivered in London would be about $13.25, which selling at the average price of $16.50 would make a profit to the lessees of the islands of $3.25 per

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[1] Statement of American industry by furriers, Vol. II, p. 526.
[2] Table of prices prepared by Mr. A. Fraser, Vol. II. p. 561.

Loss to United tates.

skin, and on 100,000 skins the profits would be $325,000. The natives who drive and kill the seals on the Pribilof Islands also receive 40 cents for each skin, or for 100,000 the sum of $40,000. Therefore the destruction of the Alaska seal herd would mean an annual loss to the Government and people of the United States of $4,330,000.

Loss to Great Britain.

The sealskin industry in Great Britain, which, as has been shown, is entirely dependent upon the Alaska seal herd for its existence, has alone in the city of London invested capital to the amount of £1,000,000,[1] and employs between two[2] and three thousand[3] persons, many of whom are skilled workmen with families dependent on them,[4] who would be compelled to learn some other trade in case the industry was destroyed. The fur brokers in London up to 1889 received 6 per cent of the price for which they sold the sealskins,[5] which on 100,000 Alaska skins, at $16 per skin, would amount to $96,000. The next expense put upon the skins is dressing and dyeing them, which is about 16*s.* a skin,[5] making in all for the 100,000 the sum of $368,000. This makes an annual loss to Great Britain, in case the Alaskan herd is commercially exterminated, of $464,000; but this is only a partial statement of the actual damage sustained, for the deprivation of eight-tenths of the seal-skin supply must necessarily reduce the industry in Great Britain to a condition which will lead capital to abandon it; and a permanent plant valued at £80,000 would become entirely useless if the sealskin industry were to come to an end.[1]

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[1] Emil Teichmann, Vol. II, p. 582; George C. Lampson, Vol. II, p. 565.

[2] Emil Teichmann, Vol. II, p. 582; Walter E. Martin, Vol. II, p. 568; G. C. Lampson, Vol. II, p. 565; George Rice, Vol. II, p. 574; Arthur Hirschel, Vol. II, p. 563.

[3] Henry Poland, Vol. II, p. 571; H. S. Bevington, Vol. II, p. 552.

[4] Henry Poland, Vol. II, p. 571; Walter E. Martin, Vol. II, p. 568; G. C. Lampson, Vol. II, p. 565; George Rice, Vol. II, p. 573.

[5] H. S. Bevington, Vol. II, p. 553.

Loss to Great Britain.

The French Republic will also suffer a serious loss from the destruction of this valuable herd of fur-bearing animals, on which the sealskin industry so largely depends. The Paris firm of Révillon Frères has alone in the last twenty years bought upwards of 400,000 sealskins, the majority of which have been made up into garments by said firm, the sales of which have amounted to about 4,000,000 francs annually for the period of twenty years. This firm employs about three hundred persons, who are skilled laborers, and who would be thrown out of employment by the withdrawal of the supply of skins furnished by the Alaskan herd; and it is safe to say from five to six hundred persons are dependent upon the sealskin industry in France.[2] If the 20,000

Loss to France.

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[1] Arthur Hirschel, Vol. II, p. 563.

[2] Leon Révillon, Vol. II, p. 590.

Loss to France.

skins annually purchased by this firm cost $25 per skin in London,[1] the total cost would be about 2,500,000 francs; and the annual loss to France through this firm's business being affected by the destruction of the Alaskan seal herd would be about 1,500,000 francs; as there are other fur companies in France also dealing in sealskins the loss would undoubtedly be much more than the figures given.

Loss to the world.

Simply relying, however, upon the actual loss sustained, as hereinbefore demonstrated, and adding the $3.00 per skin allowed as expenses paid the employés of the lessees of the Pribilof Islands, transportation, &c., amounting on 100,000 skins to $300,000, the total annual loss to the world from the destruction of this great seal herd would amount to over $5,000,000. Besides this a large number of persons employed by furriers and fur houses would be thrown out of employment, and the three hundred natives of the Pribilof Islands would be deprived of their sole means of sustenance, and become a charge upon the United States Government.

Need of regula supply of skins.

It is the further testimony of all those engaged in the sealskin business that in order to maintain the industry it is necessary that the supply of skins should be constant and regular,[1] otherwise there is great danger of loss to the buyers or sellers through fluctuation in prices, and the business of buying and selling becomes speculative. That this has been the result upon the market, through pelagic sealing in the last few years, is clearly shown by Mr. H. S. Bevington,[2] and his statement is supported by the American furriers and others engaged in the fur-trade.[3] It is therfeore evident that even in case open-sea sealing could be carried on without insuring the destruction of the herd, the results would demoralize and practically ruin the sealskin industry, now so firmly established.

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[1] Statement of American furriers, Vol. II, p. 526.

Need of regular supply of skins.

## INVESTMENTS.

Having reviewed the general loss to the world by the destruction of the Alaskan seal herd, it should now be compared with the Canadian industry in the pelagic sealing fleet, which would necessarily be abandoned in case open-sea hunting is prohibited. According to the Canadian Fishery Reports for 1890, the total valuation of the twenty-nine vessels engaged in sealing,

Canadian investment, in 1890.

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[1] Walter E. Martin, Vol. II, p. 568; Emil Teichmann, Vol. II, p. 582; G. C. Lampson, Vol. II, p. 566.

[2] Vol. II, p. 553.

[3] Statement made by American furriers. (See affidavits of S. Ullmann, Vol. II, p. 527; Alfred Harris, Vol. II, p. 529; Henry Treadwell, Vol. II, p. 529; and Hugo Jaeckel, Vol. II, p. 531, attached.)

Canadian investment, in 1890.

inclusive of canoes and boats, was $265,985.[1] By this valuation the value per ton, exclusive of outfit, is $121.54, which is undoubtedly excessive. Mr. T. T. Williams, who made a careful examination into the Canadian sealing industry in 1889, on behalf of the Alaska Commercial Company preparatory to the said Company's bidding for a new lease of the Pribilof Islands in 1890, states that it costs to build these sealing vessels and outfit them in Victoria $80 per ton, and in the United States $100.[2] An examination of the Canadian Fisheries Reports for the years 1887 and 1890 shows that twelve of the twenty-nine vessels engaged in sealing from Victoria in 1890 were so engaged in 1887, and that some of them were very old and of very little value. Thus, the *Mary Taylor* and *Mary Ellen* have both been built thirty-five years; the *Lilly* has seen forty-six years' service; the *Black Diamond* (called the *Catherine* in 1890), *Juniata*; *Wanderer*, *Letitia*, and *Mountain Chief* are all unseaworthy and have been taken out of the coast trade as being unsafe.[3] A. R. Milne, Esq., collector of the port of Victoria, reported to the Dominion Government that the total value of the fleet of twenty-four vessels, with an aggregate tonnage of 1,464 tons, in 1889 was $200,500,[1] or $83.50 per ton, which is $38.04 per ton less than the valuation given in 1890. It is difficult to see how the wear and tear on a vessel can appreciate its value, but such seems to be the case with the Victoria sealing fleet, according to the reports of Canadian officials.

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[1] Canadian Fisheries Report (1890), p. 183.

[2] Vol. II. p. 500.

[3] T. T. Williams, Vol. II, p. 500.

Canadian investment, in 1890.

But admitting the Canadian valuation to be correct, the British capital (£1,000,000) invested in the sealskin industry, which latter must be abandoned if pelagic sealing continues, exceeds the investment of Canada by over $4,600,000; in other words, the Canadian capital invested is less than 6 per cent. of the British investment.

Contrast between British and Canadian investments in 1890.

The value of the Victoria fleet of forty-nine vessels and outfit in 1891 is given by the Canadian Fisheries Report for that year as $425,150, which is also excessive.[2] According to the Canadian valuation of 1890 the average value per ton for the fleet, including outfit, is $130.20; in 1891 the same authority gives the valuation per ton for vessels and outfit as $132.73, or $2.53 per ton over and above the inflated valuation of 1890. Levi W. Myers, Esq., United States consul at Victoria, had a careful estimate made of the value of the vessels engaged in the sealing business in Victoria, by two experts, both resi-

Canadian investment, in 1891.

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[1] T. T. Williams, Vol. II, p. 499-500.

[2] Canadian Fisheries Report (1891), p. LXXXV.

Canadian investment in 1891.

dents of Victoria, and one especially, Mr. W. J. Stevens, being recognized as authority on such matters, often having been employed by the Dominion Government in examining and reporting on vessels.[1] According to such estimate the value of the vessels in 1891 was $203,200. Consul Myers also obtained from the custom-house records at Victoria the approximate age of the vessels, which shows that seven of them are "very old," two are "old," and thirty-three have seen over six years of service.[2] In consideration of this last fact stated, it is evident that the Canadian valuation is far above the true figure.

Contrast between British and Canadian investments in 1891.

However, assuming the value of the fleet of 1891 a given in the Canadian reports to be accurate, namely, $425,150, the Canadian capital is even then less than 12 per cent. of the British investment in the sealskin industry; and Great Britain, through the necessary abandonment of her permanent plant used in the industry, would lose more in this item alone than the entire Canadian investment.

Employés in Canada and London.

According to the same sources of information. Canada employed in 1890, 678 white men and Indians in seal hunting,[3] and in 1891, 439 Indians

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[1] Vol. I, p. 507.

Consul Meyer's Report (No. 156), Vol. I, p. 511.

[3] Canadian Fisheries Report (1890), p. 183.

Employés in Canada and London.

and 643 whites.[1] In London, as has been shown, from two to three thousand persons are employed in the sealskin industry: it is safe, therefore, to say that nearly three times as many people are dependent upon the sealskin industry in London alone as are employed in the pelagic seal-hunting business in Canada. The average wages per week paid to those employed in the British industry are about 30*s.*,[2] or £190,000 ($947,700) per annum to the 2,500 employés. According to the Canadian Report for 1890, above cited, the gross receipts derived from the sealskins taken by the Victoria Fleet were $492,261, the catch being sold at inflated prices because of the small number of skins obtained on the Pribilof Islands, the average price per skin in 1889, for the Northwest catch, in London, being only 39*s.* 5*d.*[3] ($9.58). It is evident, therefore, that the annual gross receipts of Canada from pelagic sealing are only about half of the sum annually paid out for wages by London houses engaged in the sealskin industry.

Value to Canada and United States.

In comparing the Canadian venture with the United States industry the contrast is even more striking. It has already been shown that the furriers, manufacturers, and merchants of the

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[1] *Ibid.* (1891), p. LXXXV.

[2] Emil Teichmann, Vol. II, p. 582; W. E. Martin, Vol. II, p. 568.

[3] Alfred Fraser, Vol. II, p. 562.

Value to Canada and United States.

United States realize annually on Alaskan skins consumed in the United States the sum of $2,100,000; the aggregate amount annually paid as wages to those employed in the American manufactories to be $490,000; the receipts of the Pribilof Islands natives to be $40,000; annually and the profits of the lessees of said islands, when 100,000 skins are taken, to be $325,000. The gross amount thus received by citizens of the United States each year from the Alaskan catch is about $3,000,000. The value of the Victoria pelagic catch for 1891 has not been published in the Canadian Fisheries Reports, but assuming the value of the Victoria pelagic catch to be $492, 261, as given by the Canadian report for 1890, which has been shown to be abnormal, the gross Canadian receipts per annum from the sealing fleet are less than 16½ per cent. of the total profits to the citizens of the United States from the Alaskan catch. If the annual receipts to the United States Government be also included, the gross sum received by Canada from her sealskin catch is 11½ per cent. of the annual profits to the Government and people of the United States on "Alaska" sealskins.

Employés in Canada and United States.

The number of persons employed in the manufacture of sealskins in the United States is

3,360,[1] which is over three times as many as were engaged in the Victoria sealing industry in 1891, according to the Canadian officials, and five times as many as were so engaged in 1890.

Employés in Canada and United States.

The receipts of France from her sealskin industry has been shown to be over $300,000 (1,500,000 francs), which is at least 66 per cent. of the gross receipts of Canada from pelagic sealing in a year when the prices of Northwest skins were abnormal. Under natural conditions, as in 1888 or 1890, the French receipts from the industry would more than equal the gross receipts of Canada from the sealing fleets catch. The number of men also employed in France is about the same as those employed in pelagic sealing in Canada in 1890.

Contrast between French and Canadian investments.

The number of persons engaged in the handling and manufacture of sealskins in the United States, England, and France is, therefore, about 6,400, or over nine times as many as are reported to have been engaged in pelagic sealing in 1890 in Canada, and about six and a half times as many as were so engaged in 1891.

Employés in Canada and in other countries.

It is very questionable, however, whether there is any real investment in Canada in pelagic sealing. The vessels are all common vessels, the guns common guns, and the boats common

Canadian investment questionable.

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[1] Statement of furriers, Vol. II, p. 586.

Canadian investment questionable.

boats, which can all be used in some other industry,[1] excepting, perhaps, the old and unseaworthy vessels.

Pelagic sealing a speculation.

But admitting the validity of the investment, it can be questioned whether those embarking therein as a rule pay the expenses incurred out of the sum realized on the catch. An examination of the table of sealing vessels and their respective catches, as given by the Canadian Fishery Reports, shows that the number of seals taken by a vessel varies to a great extent. Thus in 1889 several vessels took less than three hundred seals each; one schooner, with a crew of twenty-nine men, took but one hundred and sixty-four seals, while another, with a crew of twenty-two men, took over three thousand.[2] In 1890 the same variation may be seen.[3] In 1889 the average selling price of skins in Victoria was $7.65.[4] On the catch of one hundred and sixty-four seals, therefore, the total received would be $1,254.60, of which at least $400 would have to be paid to the hunters, leaving $854.60 to pay the entire expense of the voyage of at least four months. If the men were paid $30 a month on an average, the cost of the cruise, outside the expense of outfitting, would be at least $3,000. The loss, therefore, to the owner or charterer of the vessel would be certainly $2,000 on his investment. If one thousand seals were taken, it is also evident that there would be a very close margin on the recovery of the money expended, and the investor would probably lose or certainly not receive one per cent. on the capital invested.[1] It is, therefore, the possibility of a large catch which leads persons to venture their money in pelagic sealing, and the business is a speculation of the most uncertain character. Those engaged in the industry also find the possibility of a small supply of skins from all sources to be a fertile field for speculation, the price per skin being advanced as the number of skins on the market diminishes. It may be said, therefore, that the interests of the pelagic sealing speculators is to deplete the herd and thereby increase prices, unmindful of the ultimate result, which is sure to be the extermination of the Alaskan fur-seal. This phase of the speculation is referred to in a letter from the British Colonial Office to Sir Charles Tupper, dated June 13, 1891, which reads as follows: "That as the total cessation of sealing in Bering Sea will greatly enhance the

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[1] T. T. Williams, Vol. II, p. 500.

[2] Canadian Fisheries Report, 1889, p. 253.

[3] *Ibid.*, 1890, p. 183.

[4] T. T. Williams, Vol. II, p. 499.

Pelagic sealing a speculation.

Speculating on small supply of skins.

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[1] T. T. Williams, Vol. II, p. 501.

Speculating on small supply of skins.

value of the produce of the coast fishery, Her Majesty's Government do not anticipate that British sealers will suffer to any great extent by exclusion from Bering Sea."[1] This statement also met with the views of Lord Salisbury.[2] The cessation of sealing and the decrease of the seal herd would bring about the same result, an increase in the price of sealskins. It is more profitable, therefore, for those interested in the sealing venture to have prices raised even if the seal herd is depleted, for they will thereby derive larger returns from the investment. Very few of the owners or part owners of the Victoria sealing fleet are dependent upon pelagic sealing for a livelihood, so that it is not particularly to their interest to preserve the herd, their principal object being to get large profits, whatever may be the result.

Occupations of vessel owners.

Consul Myers, in a report to the State Department, gives the occupation of seventy-one owners or part owners of sealing vessels hailing from the port of Victoria. Of these only fourteen may be said to be dependent on sealing, and twelve others who are employed in maritime enterprises. The remainder are composed of individuals engaged in various pursuits. Among the list may be found several public officials, seven grocers, a druggist, an auctioneer, a farmer, three saloon keepers, a plasterer, an insurance agent, two iron founders, three real estate agents, a carriage manufacturer, a tanner, two women, a machinist, and others of different pursuits.[1] It is evident that the people who undertake this venture are as varied in their occupations as the purchasers of lottery tickets, and the same spirit which induces persons to risk their money in the latter has persuaded them to take their chances in the sealing business.

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[1] British Blue Book, U. S. No. 3 (1892), C–6635, p. 29.

[2] *Ibid.*, No. 30, p. 16.

Occupations of vessel owners.

Under the present state of affairs the increase of the sealing fleet, the decrease of the seal herd, and its certain extinction in a few years if pelagic sealing is continued, the insignificant investment of Canada for a few years compared with the sealskin industry of the world for an indefinite future seems infinitesimal and unworthy of notice in considering, from an economic point of view, the advisability of protecting and preserving the world's chief supply of fur-seal skins. Prohibition of pelagic sealing means the employment of thousands of people in England and the United States for generations, and the investment of millions of capital.

Results of protecting seal herd.

Nonprohibition means the employment of a few hundred persons for four or five years, the

Results if not protected.

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[1] Report of U. S. Consul L. W. Myers, April 29, 1892, Vol. I., p. 514.

Results if not protected.

investment of one or two hundred thousand dollars in a speculative and losing business, and the final destruction of the Alaskan seal herd, a never-ending source of wealth to the world, if properly protected and preserved.

### CLAIM OF THE UNITED STATES FOR DAMAGES.

Article V of renewal of *Modus Vivendi*.

Article V of the Convention of April 18, 1892, for the renewal of the *Modus Vivendi* in Bering Sea, provides that "if the result of the Arbitration shall be to deny the right of British sealers to take seals within the said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens, and lessees) for this agreement to limit the island catch to seven thousand five hundred a season, upon the basis of the difference between this number and such larger catch as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds."

Classification of damages.

Any damages to which the United States may become entitled under this Convention must be by way of compensation, first, to the Government for the loss of revenue sustained through the diminution of the number of seals caught; and, second, to the North American Commercial Company for the loss of profits incurred through the same cause.

Government claim.

I. *The Claim of the Government.*—By the lease made in 1890, the North American Commercial Company agreed to pay to the Government for the exclusive right to catch seals in the Pribilof Islands an annual rent of $60,000, the legal tax of $2 for each seal caught, and a bonus on each seal of $7.62½. Owing to the fact that the catch during 1891 was so restricted by Treasury Regulations, connected with the *Modus Vivendi* of last year, as to amount to only 13,482 seals instead of the 100,000 seals prescribed by statute, the Secretary of the Treasury agreed on June 27, 1892,[1] to accept from the lessees for the year ending April 1, 1892, in lieu of the above rents and taxes, the following sums, viz:

| | |
|---|---|
| Tax on 13,482 seals, at $2 .... .... .... .... .... | $26, 964. 00 |
| Rental $\left(\frac{13,482}{100,000} \times \$60,000\right)$ .... .... .... .... | 8, 089. 20 |
| Bonus on 12,251 good skins $\left(\frac{12.251}{100,000} \times \$7.62\tfrac{1}{2}\right) \times 12.251$ | 11, 444. 13 |
| Total .... .... .... .... .... .... .... | 46, 497. 33 |

It will be observed that in the above computation, the first item, viz, the tax, remains the same as before. The second item, viz, the rental, which in the lease is $60,000, is reduced in the proportion which the actual catch of 13,482 bears to the maximum catch of 100,000. The third,

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[1] Letter, Vol. I, p. 521.

Government claim.

viz, the bonus per sealskin, has been reduced on the same principle.

Government and lessees.

No definite arrangement has as yet been made between the Treasury and the lessees as to the amount to be paid by the latter for their franchises for the current year, but if, as is almost certain, the above-mentioned arrangement will be continued, then the loss sustained by the Government, for which it is entitled to indemnity from the Arbitrators, can be estimated by substituting for the number 13,482 in the above computation, such a number as the Arbitrators shall find might safely have been taken in excess of the 7,500 provided for in the convention.

Basis of computation of damages to Government.

For example, if it is determined that 40,000 seals might have been taken over and above the 7,500, then the Government will be entitled to an indemnity of $226,000, obtained as follows:

| | |
|---|---|
| Tax on 40,000 seals, at $2 .... .... .... .... .... | $80,000 |
| Rental $\left(\frac{40,000}{100,000} \times \$60,000\right)$ .... .... .... .... .... | 24,000 |
| Bonus $\left(\frac{40,000}{100,000} \times \$7.62\tfrac{1}{2}\right) \times 40,000$ .... .... .... | 122,000 |
| Total .... .... .... .... .... .... .... | 226,000 |

The Government is entitled to damages in this amount because this sum represents the excess which it would receive from the lessees if the catch, instead of being limited to 7,500 were limited to the number of seals which could be taken without an undue diminution of the seal herd, provided the Arbitrators found that number to be 47,500. If they actually determine upon a different number, then the result given above, by way of illustration, must be increased or diminished accordingly.

Basis of computation of damages to Government.

II. *The Claim of the Lessees.*—Under the Convention of April 18, 1892, the North American Commercial Company are entitled, as the lessees of the Government, to such an indemnity as shall compensate them for the loss of profits incurred through the forced diminution in the catch of seals. When the Arbitrators have determined the number of seals which might safely have been taken during the present season over and above the 7,500 allowed by the Convention, it will be for them to determine next the amount of profit which the lessees would probably have derived from this increased catch over and above that which will be actually realized from the catch of 7,500 prescribed by the Convention. The balance of profits so obtained will constitute the sum to which the lessees are entitled as an indemnity under the section of the Convention above cited.

The lessees' claim.

In determining the amount of profit obtained from each seal, some information may be derived

Basis of computation of lessees' damages.

Basis of computation of lessees' damages.

from a claim for damages which the lessees have filed in the United States Treasury Department, for the years 1890 and 1891, a copy of which is found in the Appendix.[1] It may be added that this claim was adjusted on June 27, 1892,[2] by the remission by the Treasury Department, as stated above, of the greater part of the rental and bonus due for the year 1891 under the lease. As the high prices for sealskins in the London market in 1890 and 1891 still continue, the estimate of profits in the above-mentioned claim would probably be as correct at the present time as in the years for which they were made.[3]

Determination of possible catch.

The Arbitrators will derive aid in determining how large a catch might have safely been made during the present season by reference to the following affidavits, viz., those on pages 73, 93, and 111, in Vol. II of Appendix.

Opinion of Sir George Baden-Powell.

It is important to observe also the language of Sir George Baden-Powell, one of the Commissioners sent by Great Britain in 1891 to examine into the condition of the seal industry. In his dispatch of March 9, 1892, to Lord Salisbury, he said: "With reference to the *modus*

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[1] North American Commercial Company to the Secretary of the Treasury, April 12, 1892, Vol. I, p. 520.

[2] The Secretary of the Treasury to North American Commercial Company, June 27, 1892, Vol. I, p. 521.

[3] The price of a sealskin in London in 1890 rose as high as 146*s*., and in 1891 as high as 125*s*. See Alfred Fraser, Vol. II, p. 561.

Opinion of Sir George Baden-Powell.

*vivendi*, I am of the opinion that the taking of one season's limited crop cannot injure the seal herd, but although not necessary the renewal of last year's prohibition and the 7,500 limitation would be beneficial." He then suggests the arrangement afterwards adopted, viz., that 7,500 "instead of 30,000" be taken on the islands, evidently employing the latter number, viz., 30,000, to designate the quantity of seals which might safely be taken by the United States, which is the same number as that suggested by Sir Julian Pauncefote in his letter to Mr. Blaine of February 29, 1892.[1] In view of these circum stances, it is submitted that 30,000 seals is the minimum number which the Arbitrators can reasonably assign as a safe catch during the present season.

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[1] British Blue Book, U. S. No. 3 (1892), C-6635, p. 155.

# CONCLUSION.

# CONCLUSION.

The United States, upon the evidence herewith submitted and referred to, claim that the following propositions of fact have been fully established:

Characteristics of the Alaskan herd.

First. That the Alaskan fur-seal, begotten, born, and reared on the Pribilof Islands, within the territory of the United States, is essentially a land animal, which resorts to the water only for food and to avoid the rigor of winter, and can not propagate its species or live except in a fixed home upon land of a peculiar and unusual formation, suitable climate and surroundings, a residence of several months on shore being necessary for propagation; that it is domestic in its habits and readily controlled by man while on the land; that it is an animal of great value to the United States and to mankind, is the principal source from which the world's supply of fur-seal skins is derived, and is the basis of an industry and commerce very important to the United States and to Great Britain; that the only home of the Alaskan seal herd is on the Pribilof Islands; that it resorts to no other land;

Characteristics of the Alaskan herd.

that its course when absent from these islands is uniform and confined principally to waters adjacent to the coast of the United States; that it never mingles with any other herd, and if driven from these islands would probably perish; that at all times, when in the water, the identity of each individual can be established with certainty, and that all times, whether during its short excursions from the islands in search of food or its longer winter migration, it has a fixed intention, or instinct, which induces it to return thereto.

Increase.

Second. That under the judicious legislation and management of the United States, this seal herd increased in numbers and in value; that the present existence of the herd is due wholly to the care and protection exercised by the United States and by Russia, the former owner of these islands; but that the killing of seals in the water, which is necessarily indiscriminate and wasteful, and whereby mostly female seals are taken while pregnant or nursing, has so reduced the birth-rate that this herd is now rapidly decreasing in numbers; that this decrease began with the increase of such pelagic sealing, and that the extermination of this seal herd will certainly take place in the near future, as it already has with other herds, unless such slaughter be discontinued.

Decrease.

Pelagic sealing.

Third. That pelagic sealing is an illegitimate, improper, and wasteful method of killing, is barbarous and inhuman in its immense destruction of the pregnant and nursing female, and of the helpless young thereby left to perish; that it is wholly destructive of the seal property and of the industries and commerce founded upon it; and that the only way in which these can be preserved to the world and to the governments to which they belong is by prohibiting pelagic sealing in the waters frequented by the herd.

Russian control in Bering Sea.

Fourth. That prior to the treaty of 1825 between Great Britain and Russia, and from a date as early as 1799, down to the cession to the United States in 1867, Russia prohibited the killing of seals in any of the waters of Bering Sea, and exercised such control therein as was necessary to enforce such prohibition.

Bering Sea not Pacific Ocean.

Fifth. That Bering Sea was not included in the phrase "Pacific Ocean" as used in the treaty of 1825, and that said treaty recognized the rightfulness of the control exercised by Russia in Bering Sea for the protection of the seals.

United States control.

Sixth. That all the rights of Russia as to the protection of the Alaskan seal herd passed unimpaired to the United States by the Treaty of 1867, and that since the cession, the United States have regulated by law and by govern-

United States control.

mental supervision the killing of seals upon the Pribilof Islands, have prohibited such killing in any of the waters of Bering Sea within the limits of the cession, and up to the present time have insisted upon their right to enforce such prohibition, but, moved by apprehensions of a disturbance of the peace between themselves and Great Britain by the opposition of the latter, they ceased to some extent to enforce it.

Acquiescence of Great Britain.

Seventh. That Great Britain acquiesced in the exercise of this right by Russia in Bering Sea and in the continued exercise of the same right by the United States up to the year 1886.

Right of control unquestioned.

Eighth. That this right and the necessity and duty of such prohibition have never been questioned, until the excessive slaughter of these animals, now complained of, was commenced by individual adventurers about the year 1885.

Investments contrasted.

Ninth. That the investment of these adventurers in pelagic sealing is speculative, generally unprofitable, and, when compared with the sealskin industry of Great Britain, France, and the United States, which is dependent upon this seal herd, very insignificant; and that the profits, if any, resulting from pelagic sealing are out of all proportion to the destruction that it produces.

Questions for Tribunal.

Upon the foregoing propositions, if they shall be found to be established, the material questions for the determination of this high Tribunal would appear to be:

Must United States submit to destruction of herd?

First. Whether individuals, not subjects of the United States, have a right, as against that Government and to which it must submit, to engage in the devastation complained of, which it forbids to its own citizens, and which must result in the speedy destruction of the entire property, industry, and interests involved in the preservation of this seal herd.

Should not international regulations be made?

Second. If any such right can be discovered, which the United States confidently deny, whether the United States and Great Britain ought not in justice to each other, in sound policy, for the common interest of mankind, and in the exercise of the humanity which all civilized nations accord to wild creatures, harmless and valuable, to enter into such reasonable arrangement by concurrent regulations or convention, in which the participation of other Governments may be properly invited, to prevent the extermination of this seal herd, and to preserve it for themselves and for the benefit of the world.

Claim of United States.

Upon the first of the questions thus stated the United States Government will claim:

Property in and right to protect.

First. That in view of the facts and circumstances established by the evidence, it has such a property in the Alaskan seal herd as the natural product of its soil, made chiefly available by its protection and expenditure, highly valuable to its people and a considerable source of revenue, as entitles it to preserve the herd from destruction, in the manner complained of, by an employment of such reasonable force as may be necessary.

Such interest as justifies protection.

Second. That, irrespective of the distinct right of property in this seal herd, the United States Government has for itself, and for its people, an interest, an industry, and a commerce derived from the legitimate and proper use of the produce of the seal herd on its territory, which it is entitled, upon all principles applicable to the case, to protect against wanton destruction by individuals for the sake of the small and casual profits in that way to be gained; and that no part of the high sea is, or ought to be, open to individuals for the purpose of accomplishing the destruction of national interests of such a character and importance.

As trustee, right and duty to protect.

Third. That the United States, possessing, as they alone possess, the power of preserving and cherishing this valuable interest, are in a most just sense the trustee thereof for the benefit of

As trustee, right and duty to protect.

mankind and should be permitted to discharge their trust without hindrance.

Pelagic sealing must be prohibited.

In respect to the second question heretofore stated, it will be claimed by the United States, that the extermination of this seal herd can only be prevented by the practical prohibition of pelagic sealing in all the waters to which it resorts.

Argument deferred.

The United States Government defers argument in support of the propositions above announced until a later stage of these proceedings.

Tribunal may sanction conduct of United States, or prescribe regulations.

In respect to the jurisdiction conferred by the treaty, it conceives it to be within the province of this high Tribunal to sanction by its decision any course of executive conduct in respect to the subject in dispute, which either nation would, in the judgment of this Tribunal, be deemed justified in adopting, under the circumstances of the case; or to prescribe for the high contracting parties any agreement or regulations in respect to it, which in equity, justice, humanity, and enlightened policy the case appears to require.

Prayer for decision.

In conclusion the United States invoke the judgment of this high Tribunal to the effect:

Russia exercised exclusive right in Bering Sea.

First. That prior and up to the time of the cession of Alaska to the United States Russia

Russia exercised exclusive right in Bering Sea.

asserted and exercised an exclusive right to the seal fisheries in the waters of Bering Sea, and also asserted and exercised throughout that sea the right to prevent by the employment, when necessary, of reasonable force any invasion of such exclusive right.

Great Britain assented.

That Great Britain, not having at any time resisted or objected to such assertions of exclusive right, or to such exercise of power, is to be deemed as having recognized and assented to the same.

Bering Sea not "Pacific Ocean."

That the body of water now known as Bering Sea was not included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia, and that after said treaty, and down to the time of the cession to the United States, Russia continued to assert the same exclusive rights and to exercise the same exclusive power and authority as above mentioned.

Rights of Russia passed to United States.

That all the rights of Russia in respect to the seal fisheries in Bering Sea east of the water boundary established by the treaty of March 30, 1867, between that nation and the United States, and all the power and authority possessed and asserted by Russia to protect said rights passed unimpaired to the United States under the treaty last mentioned.

That the United States have such a property and interest in the Alaskan seal herd as to justify the employment by that nation, upon the high seas, of such means as are reasonably necessary to prevent the destruction of such herd, and to secure the possession and benefit of the same to the United States: and that all the acts and proceedings of the United States done and had for the purpose of protecting such property and interest were justifiable and stand justified: and that compensation should, in pursuance of Article V of the Convention of April 18, 1892, be made to the United States by Great Britain by the payment by the latter of the aggregate sum hereinbefore stated as the amount of the losses of the United States, or such other sum as may be deemed by this high Tribunal to be just; or,

United States have property in and right to protect herd.

Damages.

Second. That should it be considered that the United States have not the full property or property interest asserted by them, it be then declared and decreed to be the international duty of Great Britain to concur with the United States in the adoption and enforcement against the citizens of either nation of such regulations, to be designed and prescribed by this high Tribunal, as will effectually prohibit and prevent the capture, anywhere upon the high seas, of any seals belonging to the said herd.

Or Great Britain and United States should concur in regulations.

JOHN W. FOSTER,
*Agent of the United States.*

# REPORTS OF
# BERING SEA COMMISSION.

# BERING SEA COMMISSION.

## JOINT REPORT.

An agreement having been entered into between the Governments of the United States and Great Britain to the effect that—

Provisions of treaty.

"Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Bering Sea, and the measures necessary for its proper protection and preservation.

"The four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

"These reports shall not be made public until they shall be submitted to the Arbitrators, or it shall appear that the contingency of their being used by the Arbitrators cannot arise."

Report.

And we, in accordance with the above agreement, having been duly commissioned by our respective Governments and having communicated to each other our respective powers, found in good and due form, have agreed to the following report:

Sources of information.

1. The joint investigation has been carried out by us, and we have utilized all sources of information available.

2. The several breeding places on the Pribilof Islands have been examined, and the general management and method for taking the seals upon the islands have been investigated.

3. In regard to the distribution and habits of the fur-seal when seen at sea, information based on the observations recorded by the cruisers of the United States and Great Britain, engaged in carrying out the *modus vivendi* of 1891, has been exchanged for the purpose of enabling general conclusions to be arrived at on these points.

Meetings of Commission.

4. Meetings of the Joint Commission were held in Washington beginning on Monday, February 8, 1892, and continuing until Friday, March 4, 1892.

As a result of these meetings we find ourselves in accord on the following propositions:

5. We are in thorough agreement that for industrial as well as for other obvious reasons it is incumbent upon all nations, and particularly upon those having direct commercial interests in fur-seals, to provide for their proper protection and preservation.

Duty to protect seal herd.

6. Our joint and several investigations have led us to certain conclusions, in the first place, in regard to the facts of seal life, including both the existing conditions and their causes; and in the second place, in regard to such remedies as may be necessary to secure the fur-seal against depletion or commercial extermination.

Conclusions reached.

7. We find that since the Alaska purchase a marked diminution in the number of seals on and habitually resorting to the Pribilof Islands has taken place; that it has been cumulative in effect, and that it is the result of excessive killing by man.

Decrease of seal herd.

8. Finding that considerable difference of opinion exists on certain fundamental propositions, which renders it impossible, in a satisfactory manner, to express our views in a joint report, we have agreed that we can most conveniently state our respective conclusions on these matters in the "several reports" which it is provided may be submitted to our respective Governments.

Further joint report impossible.

Further joint report impossible.

Signed in duplicate at the city of Washington, this 4th day of March, 1892.

THOMAS CORWIN MENDENHALL.
CLINTON HART MERRIAM.
GEORGE SMYTH BADEN-POWELL.
GEORGE MERCER DAWSON.

JOSEPH STANLEY BROWN,
ASHLEY ANTHONY FROUDE,
*Joint Secretaries.*

# REPORT OF THE UNITED STATES BERING SEA COMMISSIONERS.

The Honorable Secretary of State:—

Appointment.

Sir: In your letter of July 10, 1891, received by us in San Francisco on the 16th, after referring to the diplomatic controversy pending between the United States and Great Britain in respect to the killing of fur-seals by British subjects and vessels, to the causes which led up to this controversy, and to some of the propositions which had at that date been mutually agreed upon, you inform us that the President has been pleased to appoint us to proceed to the Pribilof Islands and to make certain investigations of the facts relative to seal life with a view to ascertaining what permanent measures are necessary for the preservation of the fur-seal in Bering Sea and the North Pacific Ocean.

Appointment of British Commissioners.

You further inform us that in accordance with the provisions of the fourth clause of the *modus vivendi* agreed upon at Washington on the 15th of June, 1891, the Queen had appointed Sir George Baden-Powell, M.P., and Professor Daw-

Appointment of British Commissioners.

son[1] to visit the Pribilof Islands for the same purpose and as representing the British Government.

Object of Commission.

After explaining the use to which this information may in the end be put, namely, that it may be laid before arbitrators who would probably be selected to consider and adjust the differences between the two Governments, you add that the President proposed, in reference to the appointment of a Joint Commission, the agreement for which is to be made contemporaneously with the terms of arbitration, the following terms of agreement:

Provisions of agreement.

"Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Bering Sea and the measures necessary for its proper protection and preservation. The four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree. These reports shall not be made public until they shall be submitted to the Arbitrators or it shall appear that the contingency of their being used by the Arbitrators can not arise."

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[1] Dr. George M. Dawson, Asst. Director, Geological Survey of Canada.

Conduct of investigation.

And further, that while it was desirable that our investigation should, even before the conclusion of a formal agreement as to the duties and functions of a Joint Commission, be made concurrently with those of the British agents, yet until the agreement for the Commission shall have been concluded we were not authorized to discuss with them the subject of a joint report or to make any interchange of views on the subject of permanent regulations for the preservation of the seal.

Proceed to Bering Sea.

In accordance with these instructions, we at once proceeded to Bering Sea on the Fish Commission steamer *Albatross*, Lieutenant-Commander Tanner, which had been placed at our disposal for the purpose.

Joint investigations.

We met the British Commissioners first at Unalaska, and afterwards at the Pribilof Islands. Several of the principal rookeries were visited in their company and our observations were made under similar circumstances and conditions.

Sources of information.

In addition to noting such facts as were clearly established by the physical aspect of the rookeries themselves we sought information and obtained much of value from those who have resided long upon the islands, including both Aleuts and whites, all engaged exclusively in the sealing industry. At San Francisco and at Unalaska on our way to the Pribilof Islands, Sources of information.

and at Port Townsend, Tacoma, and elsewhere on our return, we availed ourselves of the testimony of any person whose connection with this industry was such as to render his statements of real value.

Return.

We returned to Washington before the 1st of October and were ready at any time after that to take up the discussion of the subject with the representatives of Her Majesty's Government.

Formal appointment.

The formal agreement to the creation of a Joint Commission had not been entered into, however, and it was not until the 4th of February, 1892, that we were formally designated as Commissioners on the part of the Government of the United States.

Arrangement as to meetings of Joint Commission.

We immediately called upon Sir George Baden-Powell and Dr. George M. Dawson, who had been similarly designated by the British Government, and who had come to Washington for the Conference, informing them of our readiness to begin the joint consideration and discussion of the subject at such a time as might suit their convenience. We also stated that as it was our understanding that the official existence of the Joint Commission depended upon the mutual agreement of the two Governments to the articles of arbitration, and as the articles had not yet been signed, only an informal conference could be entered upon. It was believed, however, that quite as rapid progress could be made in this way as in any other. To this proposition the Commissioners on the part of Great Britain offered no objection at the time, but on the following day they informed us that they were unable to enter into a conference which was informal in its nature.

Arrangement as to meetings of Joint Commission.

Desiring to remove every obstacle in the way of the immediate consideration of this subject, the question of the formality of the Conference was waived on our side and the formal meetings of the Commissioners in Joint Conference began on the afternoon of February 11, at the Department of State.

Meetings of Joint Commission.

Mr. Joseph Stanley-Brown was selected as the secretary of the Joint Commission on the part of the United States, and Mr. Ashley Froude on the part of Great Britain. In determining the nature of the Conference it was agreed that in order to allow of the freest possible discussion and presentation of views, no formal record of the proceedings should be kept and that none but the four members of the Commission should be present during its deliberations. Infurther attempt to remove all restrictions upon the fullest expression of opinions during the Conference, it was agreed that in our several reports no refer-

Meetings held without formal records.

Meetings held without formal records.

ence to persons, as related to views or opinions expressed by members of the Commission during the Conference, should be made.

Meetings continued.

Meetings of the Joint Commission were held almost daily from the 11th of February until the 4th of March, on which day the joint report was signed and the Conference adjourned *sine die.*

Disagreement.

Early in the progress of the Conference it became evident that there were wide differences of opinion, not only as to conclusions, but also as to facts. It seems proper here to refer briefly to the attitude of the Commissioners on the part of the United States or to the standpoint from which they endeavoured to consider the questions involved.

Article IX of treaty.

The instructions under which we acted are contained in Article IX of the Arbitration Convention, and, as far as relates to the nature of the inquiry, are as follows:

> "Each Government shall appoint two Commissioners to investigate conjointly with the Commissioners of the other Government all the facts having relation to seal life in Bering Sea, and the measures necessary for its proper protection and preservation."

Application of Article IX.

This sentence appears to be simple in its character and entirely clear as to its meaning. The measures to be recommended were such as in

Application of Article IX.

our judgment were necessary and sufficient to secure the proper protection and preservation of seal life. With questions of international rights, treaty provisions, commercial interests, or political relations we had nothing to do. It was our opinion that the considerations of the Joint Commission ought to have been restricted to this phase of the question, so clearly put forth in the agreement under which the Commission was organized, and so evidently the original intent of both Governments when the investigation was in contemplation.

Result of such application.

Had the preservation and perpetuation of seal life alone been considered, as was urged by us, there is little doubt that the joint report would have been of a much more satisfactory nature, and that it would have included much more than a mere reiteration of the now universally admitted fact that the number of seals on and frequenting the Pribilof Islands is now less than in former years, and that the hand of man is responsible for this diminution.

Article IX interpreted differently by British Commissioners.

That our own view of the nature of the task before us was not shared by our colleagues representing the other side was soon manifest, and it became clear that no sort of an agreement sufficiently comprehensive to be worthy of consideration and at the same time definite enough

Article IX interpreted differently by British Commissioners.

to allow its consequences to be thought out, could be reached by the Joint Commission unless we were willing to surrender absolutely our opinions as to the effect of pelagic sealing on the life of the seal herd, which opinions were founded upon a careful and impartial study of the whole question, involving the results of our own observations and those of many others.

Disagreement as to application.

Under such circumstances the only course open to us was to decline to accede to any proposition which failed to offer a reasonable chance for the preservation and protection of seal life, or which, although apparently looking in the right direction, was, by reason of the vagueness and ambiguity of its terms, incapable of definite interpretation and generally uncertain as to meaning. In obedience to the requirements of the Arbitration Convention that "the four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments," the final output of the Joint Commission assumed the form of the joint report submitted on March 4, it being found impossible in the end for the Commissioners to agree upon more than a single general proposition relating to the decadence of seal life on the Pribilof Islands. It therefore becomes necessary, in accordance with the further provision of said

Report of Joint Commission.

Necessity of a separate report.

Convention, for us to submit in this, our separate report, a tolerably full discussion of the whole question, as we view it from the standpoint referred to above as being the only method of treatment which insures entire independence of thought or permits a logical interpretation of the facts.

Necessity of a separate report.

In order that this discussion may be more readily understood it is thought desirable to preface it by a brief account of the natural history of the fur-seal.

## THE BERING SEA FUR-SEAL.

### *Callorhinus ursinus* (Linnæus).

The carnivorous mammals are divided by naturalists into two principal groups, one comprising the terrestrial wolves, cats, weasels, and bears; the other, the amphibious eared-seals and walruses, and the aquatic seals. The second division (sub-order Pinnipedia) is in turn sub-divided into three groups called families, namely, the eared-seals, comprising the sea-lions and sea-bears, or fur-seals (*Otariidæ*), the walruses (*Odobenidæ*), and the true seals (*Phocidæ*). The fur-seals and sea-lions form the connecting link between the terrestrial carnivores and the true seals, as recognized by all naturalists. The distinguished director of the British Museum, Pro-

Divisions of mammals.

Professor Flower.

fessor Flower, says: "The fur-seals or sea-bears . . . form a transition from the Fissiped [terrestrial] Carnivora to the seals . . . When on land the hind feet are turned forward under the body, and aid in supporting and moving the trunk as in ordinary mammals . . . As might be inferred from their power of walking on all fours, they spend more of their time on shore, and range inland to greater distances, than the true seals, especially at the breeding time, though they are always obliged to return to the water to seek their food. They are gregarious and polygamous, and the males are usually much larger than the females."* He states further: "The resemblance between the skull and other parts of the body of the fur-seals and the Ursoid [*i.e.*, bear-like] Carnivora is suggestive of some genetic relationship between the two groups, and Professor Mivart expresses the opinion that the one group is the direct descendant of the other." All the fur-seals have conspicuous external ears, similar to those of most terrestrial mammals, except that they are folded lengthwise to keep out the water. The hair seals have no external ears. It may be added that

Distinction between fur-seals and hair seals.

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* Article Mammalia, in the Encyclopædia Britannica (1883, p. 442); and again in his most recent work on Mammals (Flower and Lydekker, Introduction to the Study of Mammals, London, 1891, pp. 593, 594).

**Distinction between fur-seals and hair seals.**

the fur-seals, owing to the greater length and mobility of their flippers and to their structural peculiarities, travel on land with considerable facility and speed, the body being lifted high above the ground and the gait suggesting the ambling pace of the bear. The true hair seals (family *Phocidæ*) on the contrary are wholly unfitted for progression on land. From the natural history standpoint they represent the extreme of differentiation or departure from the ancestral stock among the terrestrial carnivorous mammals. In accordance with their aquatic habits the fore legs have been so modified that they are little more than stiff paddles, like those of the whale; the hind flippers stick out behind and can not be turned forward for use in terrestrial locomotion or in climbing over rocks, and their bodies drag heavily over the ground. Their movements on land or ice are awkward and laborious, and consist of a series of vertical curvatures and extensions of the spine, suggesting the method of locomotion of the measure worm.

**Fur-seals.**

The amphibious fur-seals are not only intermediate between the hair seals and terrestrial carnivorous mammals in structure and means of locomotion, but also in habits, for they spend

Fur-seals.

fully half of their lives on land; they climb steep and high hills with comparative ease, and have been known to travel inland fully three miles. The hair seals are strictly aquatic, spending most of the time in water, and some species hardly visit the shore at all.

## PRINCIPAL FACTS IN THE LIFE HISTORY OF THE FUR-SEAL.

Homes of the fur-seal.

1. The Northern fur-seal (*Callorhinus ursinus*) is an inhabitant of Bering Sea and the Sea of Okhotsk, where it breeds on rocky islands. Only four breeding colonies are known, namely, (1) on the Pribilof Islands, belonging to the United States; (2) on the Commander Islands, belonging to Russia; (3) on Robben Reef, belonging to Russia, and (4) on the Kurile Islands, belonging to Japan. The Pribilof and Commander Islands are in Bering Sea; Robben Reef is in the Sea of Okhotsk near the island of Saghalien, and the Kurile Islands are between Yezo and Kamchatka. The species is not known to breed in any other part of the world. The fur-seals of Lobos Island and the south seas, and also those of the Galapagos Islands and the islands off

Lower California, belong to widely different species and are placed in different genera from the Northern fur-seal.

Homes of the fur-seal.

Southward migration.

2. In winter the fur-seals migrate into the North Pacific Ocean. The herds from the Commander Islands, Robben Reef, and the Kurile Islands move south along the Japan coast, while the herd belonging to the Pribilof Islands leaves Bering Sea by the eastern passes of the Aleutian chain.

Pribilof and Commander herds do not mingle.

3. The fur-seals of the Pribilof Islands do not mix with those of the Commander and Kurile Islands at any time of the year. In summer the two herds remain entirely distinct, separated by a water interval of several hundred miles; and in their winter migrations those from the Pribilof Islands follow the American coast in a southeasterly direction, while those from the Commander and Kurile Islands follow the Siberian and Japan coasts in a southwesterly direction, the two herds being separated in winter by a water interval of several thousand miles. This regularity in the movements of the different herds is in obedience to the well known law that *migratory animals follow definite routes in migration and return year after year to the same places to breed.* Were it not for this law there would be no such thing as stability of species, for interbreeding and exist-

Pribilof and Commander herds do not mingle.

ence under diverse physiographic conditions would destroy all specific characters.*

Difference of pelage of Alaskan and Russian fur-seals.

The pelage of the Pribilof fur-seals differs so markedly from that of the Commander Islands fur-seals that the two are readily distinguished by experts, and have very different values, the former commanding much higher prices than the latter at the regular London sales.

Extent of migration.

4. The old breeding males of the Pribilof herd are not known to range much south of the Aleutian Islands, but the females and young appear along the American coast as far south as northern California. Returning, the herds of females move northward along the coasts of Oregon, Washington, and British Columbia in January, February, and March, occurring at varying distances from shore. Following the Alaska coast northward and westward they leave the North Pacific Ocean in June, traverse the eastern passes in the Aleutian chain, and proceed at once to the Pribilof Islands.

Course of northward migration.

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* The home of a species is the area over which it breeds. It is well known to naturalists that migratory animals, whether mammals, birds, fishes, or members of other groups, leave their homes for a part of the year because the climatic conditions or the food supply become unsuited to their needs; and that wherever the home of a species is so situated as to provide a suitable climate and food supply throughout the year such species do not migrate. This is the explanation of the fact that the Northern fur-seals are migrants, while the fur-seals of tropical and warm temperate latitudes do not migrate.

Arrival of breeding males at islands.

5. The old (breeding) males reach the islands much earlier, the first coming the last week in April or early in May. They at once land and take stands on the rookeries, where they await the arrival of the females. Each male (called a bull) selects a large rock on or near which he remains until August, unless driven off by stronger bulls, never leaving for a single instant night or day, and taking neither food nor water. Both before and for sometime after the arrival of the females (called cows) the bulls fight savagely among themselves for positions on the rookeries and for possession of the cows, and many are severely wounded. All the bulls are located by June 20.

Battles on the rookeries.

Arrival and departure of bachelor seals.

6. The bachelor seals (holluschickie) begin to arrive early in May, and large numbers are on the hauling grounds by the end of May or first week of June. They begin to leave the islands in November, but many remain into December or January, and sometimes into February.

Arrival of cows.

7. The cows begin arriving early in June, and soon appear in large schools or droves, immense numbers taking their places on the rookeries each day between the middle and end of the month, the precise dates varying with the weather. They assemble about the old bulls in compact groups called harems. The harems are complete early

Arrival of cows.

in July, at which time the breeding rookeries attain their maximum size and compactness.

Birth of the young.

8. The cows give birth to their young soon after taking their places on the harems in the latter part of June and in July, but a few are delayed until August. The period of gestation is between eleven and twelve months.

Number of pups at birth.

9. A single young is born in each instance. The young at birth are about equally divided as to sex.

Dependence of pup upon its mother.

Cow suckles her own pup only.

10. The act of nursing is performed on land, never in the water. It is necessary, therefore, for the cows to remain at the islands until the young are weaned, which is not until they are four or five months old. Each mother knows her own pup and will not permit any other to nurse. This is the reason so many thousand pups starve to death on the rookeries when their mothers are killed at sea. We have repeatedly seen nursing cows come out of the water and search for their young, often traveling considerable distances and visiting group after group of pups before finding their own. On reaching an assemblage of pups, some of which are awake and others asleep, she rapidly moves about among them, sniffing at each, and then gallops off to the next. Those that are awake advance toward her with the evident purpose of nursing, but she

Cow suckles her own pup only.

repels them with a snarl and passes on. When she finds her own she fondles it a moment, turns partly over on her side so as to present her nipples, and it promptly begins to suck. In one instance we saw a mother carry her pup back a distance of fifteen meters (fifty feet) before allowing it to nurse. It is said that the cows sometimes recognize their young by their cry, a sort of bleat.

'Podding.'

11. Soon after birth the pups move away from the harems and huddle together in small groups, called 'pods,' along the borders of the breeding rookeries and at some distance from the water. The small groups gradually unite to form larger groups, which move slowly down to the water's edge. When six or eight weeks old the pups begin to learn to swim. Not only are the young not born at sea, but if soon after birth they are washed into the sea they are drowned.

Aquatic birth impossible.

Comparative size of bull and cow.

The harem.

12. The fur-seal is polygamous, and the male is at least five times as large as the female. As a rule each male serves about fifteen or twenty females, but in some cases as many as fifty or more.

Copulation.

13. The act of copulation takes place on land, and lasts from five to ten minutes. Most of the cows are served by the middle of July, or soon

Copulation.

after the birth of their pups. They then take the water, and come and go for food while nursing.

Fertilization of young cows.

14. Many young bulls succeed in securing a few cows behind or away from the breeding harems, particularly late in the season (after the middle of July, at which time the regular harems begin to break up). It is almost certain that many, if not most, of the young cows are served for the first time by these young bulls, either on the hauling grounds or along the water front.

These bulls may be distinguished at a glance from those on the regular harems by the circumstance that they are fat and in excellent condition, while those that have fasted for three months on the breeding rookeries are much emaciated and exhausted. The young bulls, even when they have succeeded in capturing a number of cows, can be driven from their stands with little difficulty, while (as is well known) the old bulls on the harems will die in their tracks rather than leave.

Age of puberty in cows.

15. The cows are believed to take the bull first when two years old, and deliver their first pup when three years old.

Age at which males go in breeding grounds.

16. Bulls first take stands on the breeding rookeries when six or seven years old. Before

this they are not powerful enough to fight the older bulls for positions on the harems.

Age at which males go in breeding grounds.

17. Cows when nursing regularly travel long distances to feed. They are frequently found one hundred or one hundred and fifty miles from the islands, and sometimes at greater distances.

Feeding excursions.

18. The food of the fur-seal consists of fish, squids, crustaceans, and probably other forms of marine life also. (See Appendix E.)

Food.

19. The great majority of cows, pups, and such of the breeding bulls as have not already gone, leave the islands about the middle of November, the date varying considerably with the season.

Departure from islands.

20. Part of the non-breeding male seals (holluschickie), together with a few old bulls, remain until January, and in rare instances until February, or even later.

21. The fur-seal as a species is present at the Pribilof Islands eight or nine months of the year, or from two-thirds to three-fourths of the time, and in mild winters sometimes during the entire year. The breeding bulls arrive earliest and remain continuously on the islands about four months; the breeding cows remain about six months, and part of the non-breeding male seals about eight or nine months, and sometimes throughout the entire year.

Time fur-seals remain on islands.

Length of time of migration.

22. During the northward migration, as has been stated, the last of the body or herd of fur-seals leave the North Pacific and enter Bering Sea in the latter part of June. A few scattered individuals, however, are seen during the summer at various points along the Northwest Coast; these are probably seals that were so badly wounded by pelagic sealers that they could not travel with the rest of the herd to the Pribilof Islands. It has been alleged that young fur-seals have been found in early summer on several occasions along the coasts of British Columbia and southeastern Alaska. While no authentic case of the kind has come to our notice, it would be expected from the large number of cows that are wounded each winter and spring along these coasts and are thereby rendered unable to reach the breeding rookeries and must perforce give birth to their young—perhaps prematurely—wherever they may be at the time.

Accidental births on coast.

Reasons that Pribilof Islands are the home of the fur-seals.

23. The reason the Northern fur-seal inhabits the Pribilof Islands to the exclusion of all other islands and coasts is that it here finds the climatic and physical conditions necessary to its life wants. This species requires a uniformly low temperature and overcast sky and a foggy

Reasons that Pribilof Islands are the home of the fur-seals.

atmosphere to prevent the sun's rays from injuring it during the long summer season when it remains upon the rookeries. It requires also rocky beaches on which to bring forth its young. No islands to the northward or southward of the Pribilof Islands, with the possible exception of limited areas on the Aleutian chain, are known to possess the requisite combination of climate and physical conditions.

Alaskan fur-seals do not breed on coast of California.

All statements to the effect that fur-seals of this species formerly bred on the coasts and islands of California and Mexico are erroneous, the seals remaining there belonging to widely different species.

Subdivisions of report.

In the general discussion of the question submitted to the Commission it will be convenient to consider the subject under three heads, namely:

*Conditions* of seal life in the region under consideration at the present time.

*Causes*, the operation of which lead to existing conditions.

*Remedies*, which if applied would result in the restoration of seal life to its normal state, and to its continued preservation in that state.

## CONDITIONS.

Present conditions.

In considering the condition of seal life on the Pribilof Islands at the present time, it is important to inquire, first, is there any marked decrease in the number of seals frequenting these islands during the past few years; and, second, if such decrease has taken place, among what class or classes of seals is it most notable?

Sources of information.

Although an affirmative answer to the first question is generally agreed to, it is worth while to consider for a moment the evidence on which such an opinion is founded, especially as it is all more or less related to questions concerning the amount of decrease and the period over which it extended, about which considerable differences of opinion are known to exist. This evidence easily resolves itself into two kinds: (1) the evidence of eyewitnesses or human testimony in which observations of several individuals cover the last quarter of a century; and (2) what may be called the internal evidence of the rookeries themselves as they appear to-day.

Estimates of number of seals exaggerated.

It is proper to remark that in our judgment most, if not all, of the published estimates of the number of seals hitherto found on these islands are exaggerated. From the very nature of the case an estimate of numbers is extremely difficult. In short, one can say with much more certainty that there are fewer seals here now than five years ago than he could attempt a comparison by means of an actual or rather an assumed census.

Estimates of number of seals exaggerated.

### (I) EVIDENCE OF EYEWITNESSES.

The universal testimony of all who saw the rookeries a few years ago, and again in 1890 or in 1891, is that they have suffered a great and alarming decrease within the past six or seven years. In the case of Northeast Point Rookery, the largest single rookery known, and one from the hauling grounds of which about twenty to thirty-five thousand non-breeding male fur-seals were taken annually for twenty years, the evidence is unequivocal and conclusive. This great rookery is several miles in length, and its former boundaries can be distinctly seen, as will be described in detail presently. (See also accompanying photograph.) The area occupied by breeding seals in 1891 was a narrow strip along shore, with a small area in the rear used as 'hauling grounds'; while the zone of former occupancy varies from one hundred to five hundred feet in width. Mr. C. H. Townsend, resident naturalist of the United States Fish Commission steamer *Albatross*, visited Northeast

Decrease on Northeast Point Rookery.

Visit of Commissioners.

Visit of Commissioners.

Point Rookery in company with the British and United States Bering Sea Commissioners, August 5, 1891, and stated that when he visited the same rookery in the latter part of June, 1885, the broad zone here referred to "was covered solid with seals." Lieut. John C. Cantwell, of the Revenue Steamer *Rush*, Dr. H. H. McIntyre, Capt. Daniel Webster, Mr. J. C. Redpath, and Mr. George R. Tingel, corroborate Mr. Townsend's statement that the yellow-grass zone, or zone of former occupancy, was densely covered with seals in 1885.

Native testimony as to decrease.

The testimony of natives and others in regard to other rookeries agrees very well with the above, or places the time of abandonment at a still later date, some of the natives maintaining that the yellow-grass zone was covered with seals as recently as 1887. It is evident, therefore, that the extensive area here described as the yellow-grass zone, behind the narrow strip at present occupied by the seals on the various rookeries, was thickly covered not longer ago than 1885 or 1886, and in some cases perhaps as late as 1887.

The great decrease.

In our examination of many persons who had long resided upon the islands, there was universal agreement that there had been a great decrease in the number of seals within a few years. Although the testimony gathered by us on this

The great decrease.

and other points was not given under oath, its value, in our judgment, is not in the least lessened by that fact. In nearly all cases the witnesses were examined separately. No 'leading questions' were asked, and especial care was taken to prevent the examination from indicating in anyway what was desired to be proved. Full notes of answers and statements were made, and in all cases of special importance the question was repeated and the answer read in order to be sure that the opinion of the witness had been properly given. In short, the investigation was conducted precisely as it would have been had the question been one of scientific rather than diplomatic importance.

Extracts from testimony taken.

A few extracts from the evidence relating to diminution in numbers will indicate its general character.

*Anton Melovedoff*, native of the island of St. Paul. His father had been chief of the natives on the island, and he had served in the same capacity until recently, when he had been deposed because, as he himself expressed it, he was "working in the interests of the Company rather than that of the Government."

In his opinion the number of seals had greatly diminished during the last few years.

*Dr. A. A. Lutz*, physician on the island of St.

Extracts from testimony taken.

George since 1884: "There has been a great falling off during the past few years."

*Mr. Emmons*, collector of the port at Unalaska: gets his information from the officers and men of the schooners and other craft engaged in pelagic sealing; thinks that if the present state of affairs is allowed to continue the herd of seals will soon be destroyed.

*Nicoli Krukof*, born in Sitka, came to the island of St. Paul two or three years before the time of the Alaska purchase; is now second chief on the island; speaks English very well. Seals began to decrease in number about seven years ago and have diminished rapidly since. It is his opinion that not more than one-fourth as many seals are now on the rookeries as were to be found ten years ago.

*Kerrick Artomanoff*, aged sixty-seven years; born in St. Paul; his father was a sealer under the Russian régime, as was he also up to the time of the Alaska purchase. In all he has been employed in seal killing for forty-five years. His testimony is interpreted by Nicoli, the second chief.

The number of seals has diminished very greatly within the last few years. He has seen the rookeries so full that a cow could not get ashore in time for the birth of her young, in which case the pup was born in the water and drowned.

Extracts from testimony taken.

*Mr. J. C. Redpath*, resident agent of the North American Commercial Company, and previously agent of the Alaska Commercial Company during a period of fifteen years.

Mr. Redpath has enjoyed unusual opportunities for the intelligent study of seal life. That he has made good use of them may be attributed to the fact that the best interests of the companies which he has represented on the islands demanded that no one should be better informed than he, especially in the matter of increase or decrease in the number of killable seals and the causes to which changes are to be attributed.

He said: "Not more than one-half as many females are on the rookeries this year as were to be found there ten years ago. There is the same loss in the holluschikie, about."

*Captain Webster*, agent of the North American Commercial Company on the island of St. George, has been on the seal islands for twenty-two years; was a whaler and sealer in these waters before coming to the islands; has been in the employ of the sealing companies from the beginning of the management by the United States. Captain Webster had a wide experience as a sealer in other parts of the world before

Extracts from testimony taken.

entering the service of the Alaska Sealing Company. Few persons have as much knowledge of seals and the sealing industry as he. His statement was that the falling off last year at St. George was very great, and this year the number is considerably less than last. "There are not over one-third as many seals on this island as were here a few years ago."

Difficulty of lessees to obtain quota.

Evidence of this character might be multiplied to almost any extent were it thought necessary. It is well known that during the last few years the operating Company had experienced difficulty in finding a sufficient number of high-class skins to fill the quota permitted by the Government, and that finally that quota was greatly reduced by order of the representatives of the Government on the islands. It may therefore be accepted as an undisputed fact that the seal population of the islands is greatly below what it was for many years and there is little doubt that if the causes which brought about this reduction are permitted to continue in operation, commercial extinction of the herd within a few years will be the inevitable result.

Undisputed decrease.

But, fortunately, we are not obliged to accept this conclusion solely on the basis of such testimony as that given above, reliable and convincing as it is believed to be. The evidence offered by the physical condition of the rookeries themselves would alone be sufficient to satisfy anyone that at some previous time the seal population had been vastly greater than at present.

Undisputed decrease.

### (II) INTRINSIC EVIDENCE AFFORDED BY THE ROOKERIES THEMSELVES.

The yellow-grass zone.

Behind each rookery is a more or less sharply defined strip or belt varying from one hundred to five hundred feet in width, which differs conspicuously in appearance from the ground on either side. It is covered with a short and rather fine grass of a yellowish-green color (*Glyceria angustata*), more or less mixed with tufts of a coarser species (*Deschampsia cæspitosa*), both differing strikingly from the tall and rank rye grass (*Elymus mollis*) usually growing immediately behind. In many places the ground between the tussocks and hummocks of grass is covered with a thin layer of felting, composed of the shed hairs of the seals matted down and mixed with excrement, urine, and surface soil. This felting could not have been formed otherwise than by the movements of seals back and forth over the ground for many years. In the same zone the rough upper surfaces and angular projection of the rocks have been rounded off and polished by

Worn rocks.

Worn rocks.

the former movements of the seals. This polishing, though now partly hidden by weathering and the growth of lichens, is still conspicuous, and can be attributed to no other cause than to the movements of the seals on the rookeries during a long period of years. The fact that the sides of these same rocks remain in their original rough condition is sufficient proof that the smooth upper surfaces could not have been produced by sand-polish.

Bunch-grass zone.

In some of the rookeries another zone may be discerned behind the yellow-grass zone, indicating the extent of the rookery at some still more remote period. The grass on this area is bunch grass (*Deschampsia cæspitosa*); the lichen growth on the rocks is heavier than on the one just described, and the polished surfaces of the rocks show more weathering. This latter zone abuts against the more elevated turf bearing the characteristic tall grass of the islands, and marks the period of maximum abundance of the seals.

Comparative size of areas.

The aggregate size of the areas formerly occupied is at least four times as great as that of the present rookeries.

Decrease shown by rookeries.

In short, the characteristics of a region long occupied by seals are so marked as to be unmistakable, and while it is possible to explain the existence of a small part of the unoccupied

Decrease shown by rookeries.

ground on the supposition that the seals 'rove' more or less, occupying this field at one time and that at another, no one who studies the islands as they now are can fail to see that the space now covered by seals is only a fringe compared with the areas that were once alive with them.

Decrease is in female portion of herd.

Having answered the first of the two queries relating to conditions of seal life at the present time, the second becomes important. It is, Has the decrease in numbers been confined to any particular class of seals, or is it most notable in any class or classes? In answer to this it is our opinion that the diminution in numbers began and continues to be most notable in female seals.

Difficult to notice decrease in females.

It is quite likely, in fact almost certain, that the decrease would not be first discovered or remarked in this class.

The Government officers and Company's agents on the islands are principally concerned with the 'holluschickie,' in which class the killable seals are found, and the first signs of decadence would probably appear in the fact that more seals had to be driven in order to obtain a given number of merchantable skins.

Difficulty in obtaining quota after 1887.

For eighteen years after the Alaska purchase about one hundred thousand bachelor seals were secured annually without difficulty and without impairing the productiveness of the breeding rookeries, but the decrease brought about by pelagic sealing made it extremely difficult to obtain this number after 1887, and the standard of size was lowered several times in order to obtain the full quota. In 1890 the rookeries and hauling grounds had fallen off to such an alarming extent that the Treasury agent in charge ordered the killing to stop on July 20, at which date only twenty-one thousand seals had been secured, and it may be added that this number was taken only after the greatest exertion on the part of the Company's agents.

Mistaking *effect* for *cause*.

The percentage of seals of killable size was so small (fifteen to twenty per cent.) compared with the percentage of yearlings, that it is not surprising that the Treasury agents on the islands were impressed with the scarcity of young males, and being new men, inexperienced in matters relating to seal life, were easily led to mistake *effect* for *cause* and attributed the decrease to the killing of too many young males at the islands in previous years, instead of to the destruction of the mothers and young by

Mistaking *effect* for *cause*.

pelagic sealers, an error they were quick to correct after another year's experience.

Decrease shown by daily killing.

The number of seals killed each day during the killing season may be taken as a rough index to the rapidity of the decline of the rookeries in the past few years. Treasury Agent Charles J. Goff, in charge of the seal islands in 1889–'90, states in his official report that the average daily killing in 1890 was five hundred and twenty-two, while in 1889 it was one thousand nine hundred and seventy-four for the same period.

Report of Treasury Agent Goff.

In his report for 1889 Treasury Agent Goff states: "The alarming decrease in the daily, weekly, and monthly receipts of [skins by] the Alaska Commercial Company, and as a dernier resort by said Company to secure their one hundred thousand skins, the killing of smaller seals than was customary attest conclusively that . . . there is a scarcity of seals, and that within the last year or so they are from some cause decreasing far beyond the increase." He states further: "I regard it absolutely essential, for the future of the rookeries, that prompt action be taken by the Department for the suppression of illegal killing of seals in Bering Sea, and that the utmost economy be observed in taking the seals allowed by law."

Why decrease of females was not noticed.

A considerable decrease in the number of female seals upon the breeding rookeries might not be noticed at first where the total number is so large, but in two or three years the effect of this loss would be felt in the class of killable seals, and might there be quite evident. The loss in one class would thus follow surely but somewhat behind the other in time. When the diminution in the number of killable seals became notable, attention was at once drawn to the breeding rookeries, and it was found that they were being depleted. Thus Captain Webster declared: "The great destruction has been among females. Formerly there would be, on an average, thirty cows to one bull; now they will not average fifteen."

Diminished size of harems.

And Mr. Redpath (already quoted) stated: "Not more than one-half as many females are on the rookeries this year as were found there ten years ago."

Effect of decrease of females on male life.

The reaction of a considerable reduction in the number of females upon the number of young male seals would be immediate and certain, while a reduction in males must reach such a point as to lessen the supply of bulls for the breeding rookeries before the birth-rate can be affected. There is no evidence to show that this limit has been reached in recent years, and it seems clear, therefore, that the reduction in numbers originated in and is to be attributed to the loss of female seals.

Effect of decrease of females on male life.

CAUSES.

Where decrease of seals should be sought.

If the above representation of the *conditions* of seal life at the present time be accepted as correct, the determination of *causes* is practically limited to the discovery of the origin of the increased mortality among female seals.

Cause, pelagic sealing.

It is our belief that the decadence of seal life on the Pribilof Islands is due to the destructive effects of pelagic sealing.

Reasons for opinion.

As widely different opinions are held on this point we will present at some length the principal reasons upon which our belief is founded.

Decrease caused by man.

In the joint report of the Commission it is agreed that the diminution in the number of seals is to be attributed to the operations of man. As man comes in contact with the fur-seal in only two ways, that is, in pelagic sealing and sealing upon the islands, it follows that in one or the other or in both of these operations the injury must be inflicted.

Condition of herd untouched by man.

In order to enjoy a clearer view of the problem it will be desirable to consider for a moment the conditions under which a herd of seals assumes its normal dimensions, uninfluenced by the presence of man.

Birth-rate and death-rate.

In the case of the seal or any other animal the condition of the species as to number must always depend upon the relation of the birthrate to the deathrate. As long as these two are equal the number remains constant, provided, of course, the distribution of deaths among the various ages remains the same. Change the distribution, and there will be a temporary increase or decrease in the total number of the species, according as the deaths are shifted toward the later or earlier part of the animal's existence. Thus, suppose twenty years to be the normal age of the seal: if all deaths occur at the end of twenty years, the total number alive at any one time would be much greater than if the mortality was distributed throughout the whole period. When a certain distribution of this mortality is determined upon, however, the number of individuals living at one time will adjust itself to this distribution and will then remain constant, provided, always, that the distribution of mortality is such as not to affect the number of births. If, in any species, it could be determined that no deaths should occur until sometime after the reproductive age had been reached, such a species would increase with great rapidity. With equal certainty, if it were fixed that all deaths should occur before the reproductive age, the species would be shortly

**Birth-rate and death-rate.**

annihilated; and if more than a certain number of deaths occur at that early period, the destruction of the species is only a question of time. Given, therefore, a species comprising a certain number of individuals, that number will tend upward or downward or will remain constant, according to the relation of births to deaths. In nature, where the conditions for a certain species are favorable, the usual course is that the numbers increase until by the increase of their natural enemies, or the less favorable character of the conditions (usually less favorable by reason of insufficient food supply resulting from increase in numbers), the birthrate and deathrate become equal, after which the number will remain constant until some new influence makes its appearance to affect them favorably or unfavorably.

This is the condition which the seals would unquestionably reach in time if not interfered with by man, and which, undoubtedly, they have reached at various times in their history. Under this condition certain numbers of seals are born every year, and the same number die every year, the total number alive at any one time depending on the distribution of the deaths among seals of various ages.

Man does not necessarily increase death-rate.

Now, let man enter upon the scene, and let him destroy annually a certain number of seals. The deathrate is not necessarily increased, the time of dying only may be changed, seals being killed at the age of four years which would otherwise have lived to the age of fifteen or twenty. The total number of seals living at one time may be much reduced while the number of births may remain the same.

Regulation of killing.

If man is benefited by killing seals, in order that his gain may be as great as possible, it is evidently important to so conduct the killing that the dimensions of the herd may be maintained at a maximum. The larger the herd the more he can take annually for his own uses. This maximum number is secured, and is secured only by bringing to and maintaining the number of births per annum at the highest possible limit.

Interference with birth-rate injurious.

We have gone thus into the details of this argument in order that there might remain no doubt as to its effect, and to emphasize the simple but most important proposition that *whatever interferes with the birth-rate is injurious to the seal herd.*

Effect of a single young a year.

It may be well at this point to invite attention to the fact that the fur-seal as a species is very sensitive to influences which tend to disturb the balance between births and deaths. Unlike many animals, the number of offspring thrown upon the world to take their chance in the struggle for existence is small, each fertile animal giving birth to only a single young each year.

Effect of a single young a year.

The life of the seal herd, then, depending as it unquestionably does on the constancy of the number of births, can be endangered from two directions: First, from the killing of fertile females; and, second, from the excessive killing of males, carried to such an extent as to prevent the presence of the necessary number of virile males on the breeding rookeries. To one or the other of these causes must be charged the great change that has come upon the rookeries within recent years, and the commercial destruction with which the sealing industry is now seriously threatened.

How birth-rate may be lessened.

We are firmly of the opinion that an impartial examination of all the facts in the case will show conclusively that the latter of the two possible causes has had no appreciable part in the destructive work that has been accomplished.

Killing a certain number of males will not affect birth-rate.

The polygamous habits of the fur-seal have already been described, as well as the separation in hauling out of the 'holluschickie' or younger males from the breeding rookeries. The battles among the older males for places upon the breed-

Battles on rookeries show no lack of males.

Battles on rookeries show no lack of males.

ing-grounds have long been described as one of the peculiar characteristics of the species. A younger male is obliged to win his right to a harem by conflict with his older brethren already in possession. Many thousands of virile young males lie at a convenient distance on the hauling grounds, ready to engage in a struggle for a place in the affections of the female seal should a favorable opportunity occur.

Testimony as to no lack of males.

Notwithstanding the depleted condition of the rookeries, these conflicts and struggles still go on. They went on last year and also in 1890. This condition of things is utterly incompatible with any theory which assumes a scarcity of virile males. The evidence of the most reliable and credible observers goes to prove the same thing. Mr. Redpath and Captain Webster have already been quoted as declaring that it is among female seals that the great scarcity exists, but it is worth while here to repeat the statement of the latter, that "formerly there would be on an average thirty cows to one bull; now they will not average fifteen." Several of the native observers placed the number of cows formerly served by one bull at a much higher figure than thirty. These facts rather tend to show that males are relatively in excess on the breeding rookeries at the present time. Our own observations convinced us that at least there could be no deficiency and that it was a practical impossibility for any breeding cow to escape service on account of paucity of virile males.

Testimony as to no lack of males.

The unavoidable conclusion is, then, that the deterioration of the herd must be attributed to the destruction of female seals.

Decrease caused by killing females.

If a herd of seals be taken in its natural condition, that is, as not interfered with by man, males and females will be found practically equal in number, as the number of births in a year of both sexes is the same, and we have no reason to believe there is any great difference in the natural mortality of the sexes. The total number of females may be divided into two classes, the breeding and the nonbreeding, the former being probably a large proportion of the whole. The nonbreeding females include those that have not yet reached the reproductive age and the few which from old age or other causes are barren.

Natural condition of herd.

Classes of females.

The male seals may likewise be divided into two classes, the virile and the nonvirile, the latter including those below the age of virility and those impotent on account of old age. The reproductive power of the herd, therefore, lies in the breeding females and the virile males. The maintenance of the birthrate, the vital and essential element in the preservation and perpetuation

Classes of males.

On what birth-rate depends.

On what birth-rate depends.

of the herd, requires the preservation of the *whole* of the class of breeding females, while only a small number of virile males are necessary or at all concerned in the matter.

This is the great essential difference between the importance of the life of the female and that of the male to the conservation of the herd, and it is the fundamental proposition on which hangs the solution of the whole problem.

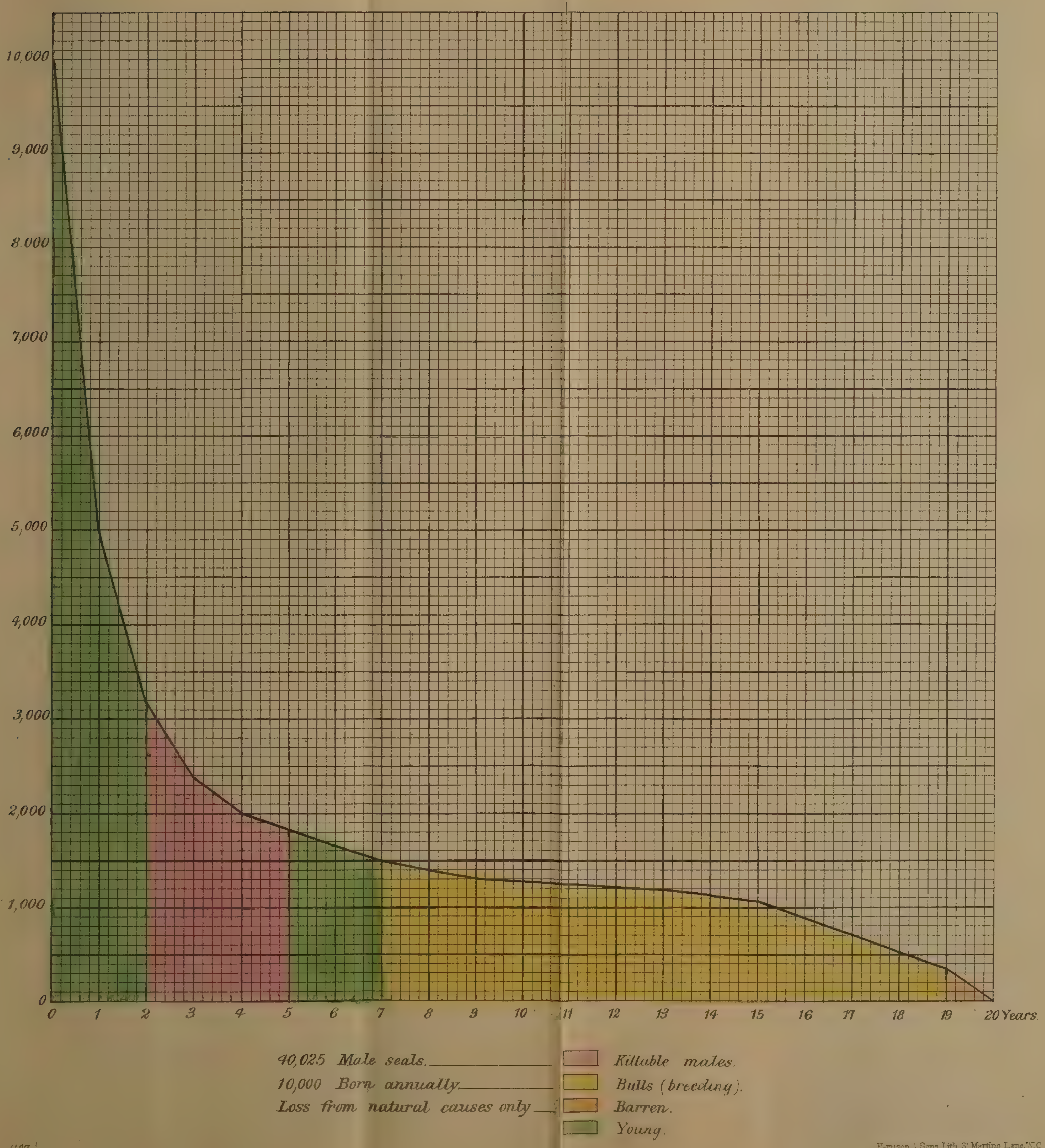
Explanation of diagrams.

We have ventured to illustrate this by means of a graphic exhibition of a hypothetical herd of eighty thousand seals, in the accompanying diagrams, in which the effect of killing males is shown to be harmless if kept within certain limits. In these diagrams the age of the seals is shown on the horizontal line at the base of the figure and the number of seals at any given age is proportional to the length of the vertical line on the diagram at the point representing the age. Unfortunately we have no 'tables of mortality' for seals; we know only approximately their maximum age and we have little knowledge as to the distribution of their deathrate. Based on the best information available, we have assumed the normal age to be twenty years, and, to be on the safe side, have further assumed that one-half of the seals born die during the first year after birth. The outer curve of the diagram, showing

# A.

## MALE SEALS

## NATURAL CONDITION.



*40,025 Male seals.*
*10,000 Born annually.*
*Loss from natural causes only.*

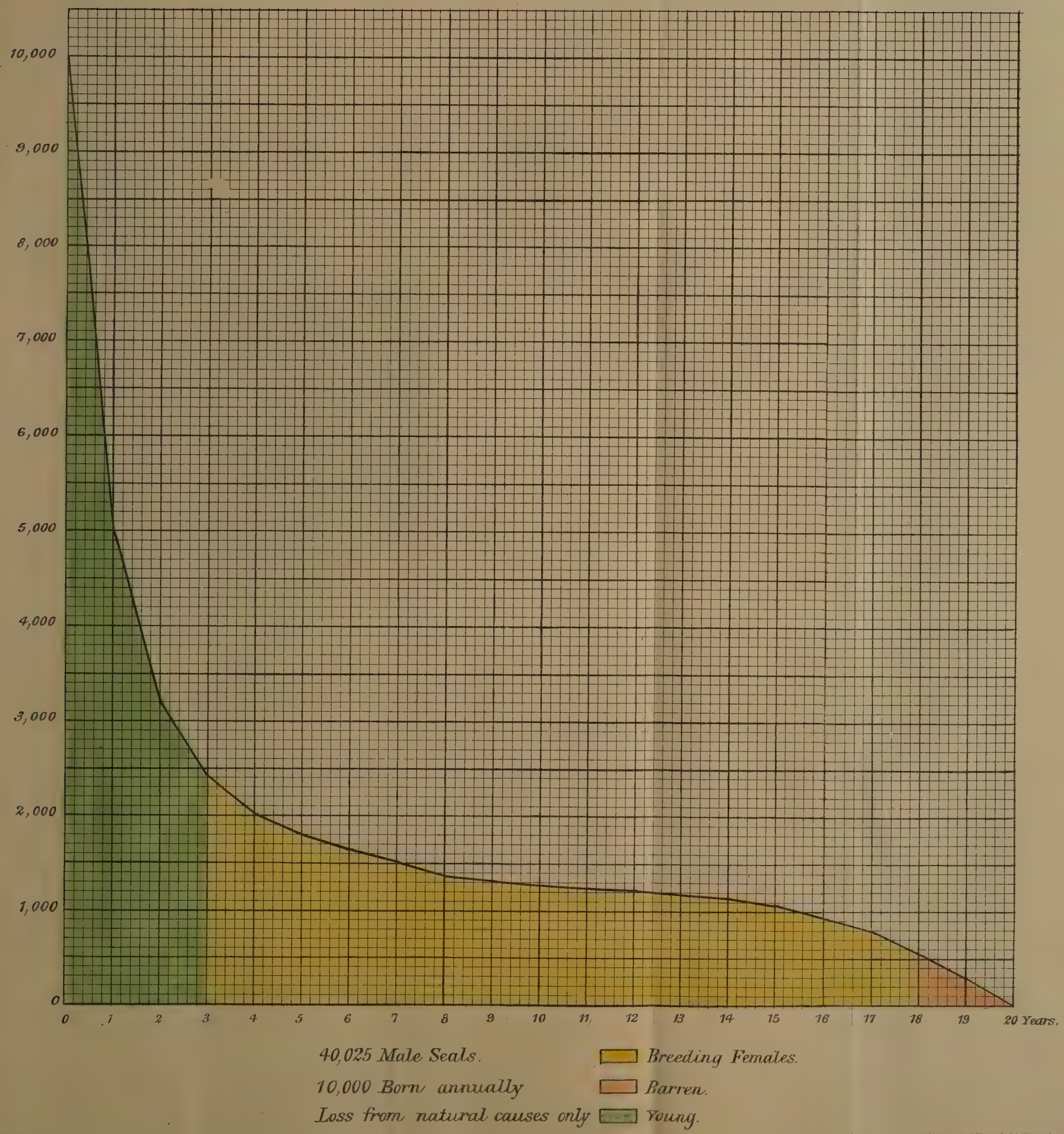
(75. 1/93. 1197)

Harrison & Sons, Lith. St Martins Lane, W.C.

# B.

## FEMALE SEALS.

## NATURAL CONDITION.



5 6/93. 1191)

Explanation of diagrams.

the distribution of ages from this time on pretends only to be an approximation, as it is impossible to obtain the accurate information necessary for a better representation. We maintain, however, that the fullest knowledge would necessitate no change which would materially affect the force of our argument based on these diagrams.

The longest vertical line at the left represents the number of births annually, which, for convenience, is assumed to be ten thousand of each sex. At the end of one year the vertical line is reduced one-half in length, as half the seals born the year before are assumed to be dead. At the end of the second year it is still further shortened, and so on until the end of the twentieth year. There can thus be traced the history of a group of ten thousand seals from birth to final extinction, the area bounded by lines vertical at the beginning and end of any year showing the number alive at any age, as between ten and eleven years of age, and the total area of the diagram is proportional to the total number of seals in the herd.

Diagrams A and B represent the males and females of such a herd in its natural condition, that is, not interfered with by man. It is in a condition of practical stability, the males and females are equal in number, and the diagrams are identical, except as to the coloring of the

**Explanation of diagrams.**

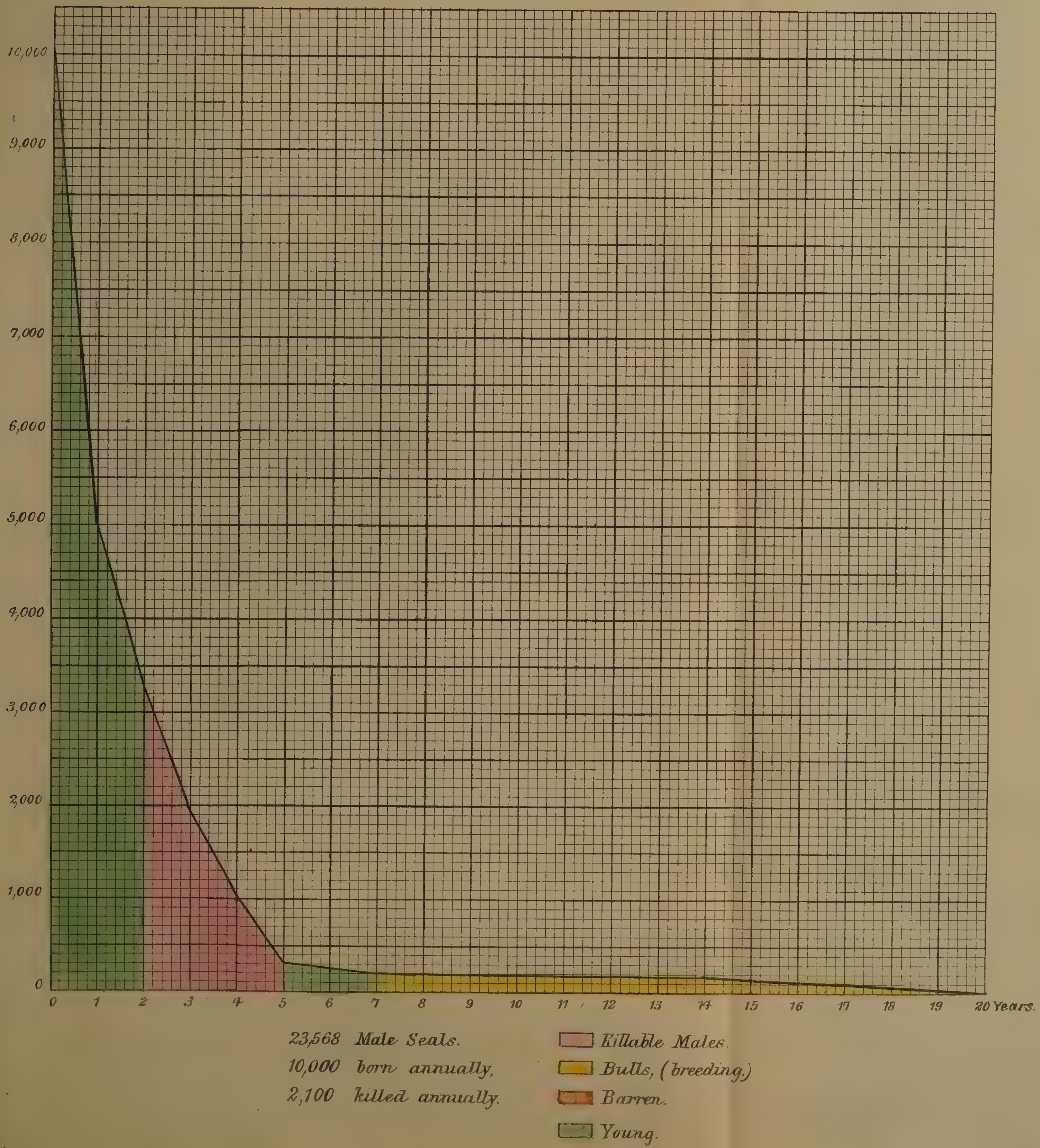
different parts, by means of which it is attempted to represent the numbers of the different classes of seals. We can fix the ages for 'killable seals' with certainty, and all included under that head are represented in the diagram by that portion colored red. Male seals not killable and not old enough to take a place on the breeding rookeries are shown in green, while those of the breeding age are shown in yellow. The lines of demarcation up to this point are quite accurately known and the diagram may be regarded as correct, but we do not know certainly at what age the male becomes impotent and is driven off the rookery. The best estimate based on analogies of other animals, places this period at about the age of seventeen years, and the diagram so represents it.

In the classification of female seals there is some difficulty, for while we are tolerably certain that the young female goes on the breeding rookeries at least at the age of three years, we know little about the age at which she becomes barren. The assumption that this period is reached, on the average, at the age of eighteen years, is, perhaps, not very far from the truth. The younger females under the breeding age are presented in green, the breeding females in yellow, and the barren in brown.

# C.

## MALE SEALS.

## NORMAL CONDITION UNDER PROPERLY REGULATED KILLING.



*23,568 Male Seals.*
*10,000 born annually,*
*2,100 killed annually.*

(1197)

Harrison & Sons, Lith. S. Martins Lane, W.C.

Explanation of diagrams.

Thus the diagrams give, it is believed, a fair representation of the condition of a herd of about 80,000 seals, 10,000 males and the same number of females being born each year, showing the breeding and the nonbreeding of both males and females; the breeding males, it must be remembered, including those not only found at the head of harems, but all of those that in virtue of their age and condition are capable of filling a place on the breeding rookeries. The killable males include only those not under two or over four years of age, which furnish skins of the finest quality and greatest value.

It is important to remark here that everyone of the breeding females is necessary to insure the annual birth of 20,000 pups. If this were not the case and the herd were undisturbed it would increase in numbers, which is contrary to the hypothesis that it has already reached its normal condition of stability.

Diagram C shows the male portion of the same herd when judiciously worked by man. No females under the breeding age can be killed, for that would very shortly reduce the number of breeding females, and none of these can be spared without reducing the number of births. The only females available for killing without injury to the herd are the barren females. Were their

Explanation of diagrams.

skins not inferior and of less value than those of the young males it would be impossible, under the most favorable circumstances, to certainly distinguish them from their more fruitful sisters. With males, however, the case is entirely different. It is only necessary with those of the killable age given above to allow enough to escape the club to supply the annual deficit of virile males on the breeding rookeries. In other words, if 100,000 breeding females were required to maintain a given herd, rigorously speaking, and assuming as a moderate estimate twenty females in each harem, only 5,000 breeding males would be required and it would only be necessary to spare enough to keep up this number. The diagram assumes a much more liberal supply of males, however, the ratio being assumed at twelve to one.

The diagram shows that the total number of males in the herd would be greatly diminished and the census of the whole herd correspondingly lessened. But when once reached, the new condition would be constant and self-sustaining; the same number of seals might be killed annually forever without danger of diminution, except from other causes. The calculation on which the diagram is constructed shows that the number of male seals would be

Explanation of diagrams.

reduced to nearly one-half of what it would be in the undisturbed condition, and that about twelve to thirteen years would be required to reduce the male herd to this condition of stability under constant killing. Taking such a herd as is considered in the construction of the diagrams, it would number about 80,000, equally divided between the two sexes, 20,000 being added by birth and the same number subtracted by death each year.

In order to represent more clearly the enormous herd of seals which it may be supposed at one time frequented the Pribilof Islands, undisturbed by man, these numbers may be multiplied so as to give a total of 3,000,000 seals, 750,000 being born every year and the same number dying from natural causes. Of the 1,500,000 females about 800,000 would be breeding, the remainder mostly too young to breed, a very small number being barren. Of the 1,500,000 males about 65,000 would be on the breeding rookeries, and the remainder, excluding the young just born, would haul out as 'holluschickie,' and would include 285,000 of a suitable age for killing, on account of the superior character and condition of their skins.

In undertaking to utilize the products of this herd for the good of man, the problem which is

Explanation of diagrams.

presented is to determine how many and what classes of seals may be taken annually without diminishing the number of births. As already stated, the solution consists in taking a limited number of male seals between certain ages, leaving a sufficient number of breeding males for the rookeries and guarding the females in the most careful manner. The investigation shows that in this assumed herd of three million 80,000 males may be taken annually between the ages of two and five years, and that the total number of males will be gradually reduced from 1,500,000 to about 880,000, thus diminishing the total of the herd from 3,000,000 to 2,380,000, after which no further reduction will take place.

One reason females are killed by pelagic sealers.

When it is remembered that of the 880,000 male seals remaining, 375,000 are the recently born young, and after making the same reduction of the total females (1,500,000) it will be seen that under these conditions the number of females is more than double the number of males and this fact alone would account for an excessive number of females taken by pelagic sealers.

Conclusion from diagrams.

An examination of the diagrams will show that the number of seals included in the class of breeding females is but little in excess of the number actually necessary for the maintenance of the birthrate, provided every seal is fruitful every year. In the nature of things, this can not be expected, and the excess here existing is undoubtedly small enough to insure against loss. Although the allotment of one male to twelve females is believed to be less than the actual average in nature, the number of males allowed to escape the club is considerably in excess of that demanded on this supposition, and all of the hypotheses of the calculation are made to insure safety and perpetuity to the herd.

Conclusions from diagrams.

The graphic representation of the condition of the herd serves also to emphasize the fact that when an attack is made on the life of the seal by destroying the females, the results of such destruction will be first noticed in a diminished number of killable males. The number of males being relatively small, any change is more readily observed, particularly since the killable males of the herd are the only seals in which the islanders are immediately interested.

Effects shown by diagrams.

Having thus shown the possibility of continually taking a large number of male seals without the slightest danger to the herd, and also that the only harmless killing of female seals is that in which the barren only are destroyed, let us examine the nature of pelagic sealing and its results as compared with sealing on the islands.

## SEAL KILLING ON THE PRIBILOF ISLANDS.

Possibility of restriction.

In reference to the latter it can be positively affirmed that it can be entirely controlled by man. The sex and age of the seals killed may be fixed by regulation and the number to be taken definitely determined in advance. In fact, it is difficult to imagine any operation of a similar character more perfectly controllable than this. Not only can the character of seal to be killed be rigorously prescribed, but the killing can be conducted in such a manner as to be least harmful to the remaining portion of the herds, and that freedom from disturbance during the breeding season which is so essential to the life of the seal can be assured.

Class of seals killed.

The only seals killed at the seal islands are nonbreeding males (under five or six years of age, called 'holluschickie'). They come up on the rookeries apart from the breeding seals, and large numbers are present by the latter part of May or first week in June, after which they constantly pass back and forth from the water to the hauling grounds. They are driven from the hauling grounds to the killing grounds by the native Aleuts, who have been trained in this work from generation to generation. Here the seals are divided into little groups. Those selected as of suitable size are killed by a blow on the head

Driving.

Driving.

with a club, the others are allowed to go into the water and soon reappear on the hauling grounds. In this way about one hundred thousand young males have been killed annually on the Pribilof Islands for twenty years.

Killing pups for food.

In addition to the commercial killing above described, a number of male pups were formerly killed each year to furnish food for the natives, but the killing of pups is now prohibited by the Government.

Criticisms on manner of 'driving.'

The only objections that have been urged against this mode of taking seals are such as relate to details of the operations as ordinarily carried on, any of which could be modified if it was found desirable to do so. Much stress has been laid upon the destructive effects of seal driving, and it has even been affirmed that when a male seal has once been 'driven' its reproductive powers are lost.

While there is no doubt that in some instances excessive driving has been allowed, that seals have been driven further than is actually necessary, and that proper care has not been taken to eliminate the nonkillable seals as far as possible before the driving is well under way, those are matters that are so entirely under control that a proper adjustment may be secured at once.

Male seals not injured by 'driving.'

The assumption that driving is seriously injurious to the reproductive powers of the male is doubtless unfounded, being quite contrary to the declared belief of Captain Webster and other sealers of long experience. Against every assertion of this kind it is only necessary to put the fact that there is no evidence of a lack of virility on the rookeries, but, on the contrary, it is evident that there is a surplus of it at the present time, unless, indeed, it is assumed that harems are defended and held against the most ferocious attacks, often at a loss of much blood and muscle, by impotent seals.

Management.

Seal killing on the Pribilof Islands has been and is conducted on the theory outlined above, that the male seal only should be killed, and of these a limited number whose age falls within certain narrow limits, and that the female should be spared at all hazards. The same principle controls the killing on the Commander Islands, and, as far as we know, wherever and whenever the operation has been subjected to intelligent control. Where these restrictions have not been applied the life of the herd was generally short and the commercial destruction complete.

The picture presented by pelagic sealing is of a different character.

## SEAL KILLING AT SEA OR PELAGIC SEALING.

Vessels and crew.

Pelagic sealing is carried on chiefly by means of schooners, each of which is provided with a crew of twenty to twenty-five men and several small boats for hunting. When seals are encountered the small boats put out and the hunting begins. If a seal is seen on the surface the hunter approaches it as quietly as possible, and when near enough shoots it with the shotgun or rifle; but most seals are shot as they rise within range of the boat. When a seal is shot the oarsman pulls toward it as rapidly as possible in the hope of reaching it before it sinks. By the aid of an iron hook on the end of a light pole many seals are secured after they have sunk below the surface but have not yet passed out of reach. Some of the sealing vessels use steam power, but most of them depend on sails.

Manner of hunting.

The gaff.

Indian hunters.

Formerly, Indian crews were taken almost exclusively, and the spear was used instead of firearms, in order not to frighten the seals. This method had the great advantage of securing nearly all seals wounded. Now, both Indian and white hunters are employed, and the use of the spear has been almost wholly superseded by the use of firearms. The shotgun is used more than the rifle for the reason that fewer wounded seals are lost thereby.

Indian hunters.

In addition to the destruction wrought by the sealing schooners, pelagic sealing is still carried on along shore by the native Indians in their canoes, but the number of fur-seals thus killed is relatively small.

History.

Pelagic sealing has been carried on fortuitously and on a small scale for many years, but it was not until within the present decade that numerous vessels engaged systematically in the enterprise. The profits are so great in comparison with the capital invested that, as the results of the annual catch became known each year, a constantly increasing number of vessels was led to engage in the industry, with a corresponding increase in the number of seals killed in the open sea. The fur-seals which move northward along the coast of the Northwestern United States, British Columbia, and southeastern Alaska from January until late in June are chiefly pregnant females, and about ninety per cent. of the adult seals killed by pelagic sealers in the North Pacific are females heavy with young.

Destruction of female seals.

Pelagic sealers enter Bering Sea.

For several years the pelagic sealers were content to pursue their destructive work in the North Pacific, but of late they have entered Bering Sea, where they continue to capture seals in the water throughout the entire summer. The

Nursing females killed.

females killed during this period are giving milk, and are away from the islands in search of food. Their young starve to death on the rookeries. We saw vast numbers of dead pups on the island of St. Paul last summer (1891), which, from their emaciated condition, had evidently died of starvation. The total number of their carcasses remaining on the Pribilof Islands at the end of the season of 1891 has been estimated by the United States Treasury agents at not less than twenty thousand.

Dead pups on the rookeries.

Bering Sea sealing season.

Pelagic sealing is now carried on in the North Pacific Ocean from January until late in June, and in Bering Sea in July, August, and September. Some sealing schooners remain as late as November, but they do so for the purpose of raiding the rookeries.

Catch of sealing vessels.

The number of seals secured by pelagic sealers is exceedingly difficult to ascertain, because no complete record has been kept of any except those sold in Victoria, British Columbia. Many thousands have been sold in San Francisco, concerning which we have not been able as yet to obtain reliable information.

The number of seal skins actually recorded as sold as a result of pelagic sealing is shown in the following table: *

| Year. | No. of skins. | Year. | No. of skins. |
|---|---|---|---|
| 1872 | 1,029 | 1882 | 17,700 |
| 1873 | .. | 1883 | 9,195 |
| 1874 | 4,949 | 1884 | †14,000 |
| 1875 | 1,646 | 1885 | 13,000 |
| 1876 | 2,042 | 1886 | 38,907 |
| 1877 | 5,700 | 1887 | 33,800 |
| 1878 | 9,593 | 1888 | 37,789 |
| 1879 | 12,500 + | 1889 | 40,998 |
| 1880 | 13,600 | 1890 | 48,519 |
| 1881 | 13,541 | 1891 | 62,500 |

† Number estimated from value given.

Indiscriminate killing.

It can not be denied that in pelagic sealing there can be no selective killing, as far as individual seals are concerned, and only in a limited degree by restricting it as to place and time. It necessarily follows that female seals must be killed and seals whose skins owing to age and condition are much less desirable. As

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* The figures for the years 1872 to 1876, inclusive, and 1891, are from the London Trade Sales. Those from 1877 to 1887, inclusive, are from the official reports of the Minister of Marine and Fisheries of Canada, and probably fall short of the actual catch, because the catch of the United States vessels is not included. The figures for 1888 are from the same source (26,983) plus the United States pelagic catch (9,806), as stated in the Report of the United States Commissioner of Fish and Fisheries for that year. The figures for the years 1889 and 1890 are from the Canadian Fisheries Reports, and comprise both the catch of the Canadian fleet (33,570 for 1889 and 44,750 for 1890) and of other vessels which sold their skins in Victoria, British Columbia (7,428 in 1889 and 3,768 in 1890). The catch of American vessels sold in San Francisco is not included.

Percentage of females in catch.

a matter of fact, there is sufficient evidence to convince us that by far the greater part of the seals taken at sea are females; indeed, we have yet to meet with any evidence to the contrary. The statements of those who have had occasion to examine the catch of pelagic sealers might be quoted to almost any extent to the effect that at least eighty per cent of the seals thus taken are females. On one occasion we examined a pile of skins picked out at random, and which we have every reason to believe was a part of a pelagic catch, and found them nearly all females. When the sealers themselves are not influenced by the feeling that they are testifying against their own interests they give similar testimony. The master of the sealing schooner *J. G. Swan* declared that in the catch of 1890, when he secured several hundred seals, the proportion of females to males was about four to one, and on one occasion in a lot of sixty seals, as a matter of curiosity he counted the number of females with young, finding forty-seven.

Letter of C. M. Lampson & Co.

Evidence on this point might be extended indefinitely, but one or two additional references will be valuable. The following is from Messrs. C. M. Lampson & Co., of London, the most extensive dealers in furs in the world, and everywhere

Letter of C. M. Lampson & Co.

recognized as a high authority on this question. Referring to the regular supply of fur-seals that had for many years come into the market from the vicinity of Vancouver Island, they remark:

"The quantity, we should say, has averaged at least ten thousand per annum. This catch takes place in the months of March and April, and we believe that the animals from which these skins are derived are females of the Alaska seals, just the same as those caught in the Bering Sea. Had this quantity been materially increased we feel sure that the breeding on the Pribilof Islands would have suffered more before now, but, fortunately, the catch must necessarily be a limited one, owing to the stormy time of the year at which it is made, and the dangerous coast where the seals, only for a short time, are found. It must, however, be evident that if these animals were followed into the Bering Sea and hunted down in a calm sea in the quietest months of the year, a practically unlimited quantity of females might be taken, and, as you say, it would be only a few years till the Alaska seal was a thing of the past." (Extract from a letter addressed to C. A. Williams, esq., August 22, 1888.)

Opinion of Sir George Baden-Powell.

Essentially the same view is held by so well known an authority as Sir George Baden-Powell, after having visited the western coast and thoroughly investigated the question, as he says, from the point of view of natural history, in a letter written by him to the London Times in November, 1889. Among other things, relating to the Bering Sea question, he says: "As a matter of fact, the Canadian sealers take very few, if any, seals close to these islands. Their main catch is made far out at sea and is almost entirely composed of females."

The London Trade Sales.

In addition to evidence of this kind, the records of the London Trade Sales may be cited. In these the pelagic catch in Bering Sea and the North Pacific is quoted under the title "Northwest Coast," and the character of the skins is conclusively shown by the fact that their market price is invariably very much lower than that of the island catch quoted under the title of "Alaska skins."

Waste of life.

An important element in determining the effect of pelagic sealing is its wastefulness, growing out of the loss of many seals at sea by their being wounded so that they either die and sink at once or escape without being taken, only to die soon after. When female seals are

Waste of life.

thus lost—and the great majority are shown to be females—a serious wound is inflicted upon the herd, without the gain of so much as a single skin.

Great numbers wounded.

While there is much difference of opinion as to the relation of the number of seals lost in this way to the number taken, no one denies that some loss occurs. That seals are often wounded without being taken, is proved by the frequent finding of bullets and shot in the bodies of seals killed on the islands. As no females are killed there, and as those seals of either sex that are wounded to death at sea, but not secured, can never be appealed to as witnesses, the extent of the injury from this source must be more or less a matter of inference. The only direct testimony is that which must be furnished by those engaged in pelagic sealing, and in this matter they are personally interested to such an extent as to render their evidence of uncertain value. Such as we were able to examine on this point ventured the opinion that about one-third of those killed were lost. Captain Webster declares it to be his belief that about one-third of the number killed were saved. Doubtless much depends on the method of killing, the use of spears being thought to be much less wasteful than that of rifle

Percentage of seals lost.

Percentage of seals lost.

or shotgun. Guns, however, are now generally employed by the hunters. Many persons who have had opportunities for acquiring information on this question by conference with pelagic sealers, Indian and white, or from other sources, have declared that the loss is very much greater, putting the number of seals lost to those recovered as five to one or ten to one, or even higher. In the absence of more certain knowledge, it is our judgment, based on the best information available, that such estimates are exaggerated, but there can be no doubt that the loss from this source is real and serious, and that it must be taken into account in any estimate of the effects of pelagic sealing.

Growth of pelagic sealing.

Pelagic sealing as an industry is of recent origin, and may be said to date from 1879. In 1880, according to the official report of the Canadian Minister of Marine and Fisheries, 7 vessels and 213 men were engaged in pelagic sealing in the North Pacific, securing 13,600 skins, valued at $163,200. The same authority states that in 1886, 20 vessels and 459 men secured 38,907 skins, valued at $389,070. In 1891 the number of United States and Canadian vessels had increased to over 100; upwards of 2,000 men were engaged, and more than 62,000 skins were secured.

**Growth of pelagic sealing.**

Thus it appears that for ten years after the Alaska purchase the fur-seals of the Pribilof Islands were practically undisturbed in passing to and from their breeding grounds; that in 1879, 7 vessels and 213 men attacked them in the sea along the Northwest Coast, securing 13,600 skins; that the industry proved so remunerative that in twelve years the number of vessels had increased from 7 to over 100; the men from 213 to upwards of 2,000, and the skins secured from 13,600 to more than 62,000! One of the effects of this slaughter was the appearance on the rookeries upon the islands of thousands upon thousands of dead pups, starvation resulting from the loss of their mothers who went out in search of food but never returned. A glance upon the chart, showing the location of the sealing schooners when warned out of the sea by Government vessels will throw much light on the wholesale, not to say inhuman, destruction of young seals.

**Comparison of sealing on land and at sea.**

Finally, in comparing the operation of taking seals on land with pelagic sealing, it is important to observe that in the latter there is no possible way in which the *number* of seals taken can be controlled. While limitations of time and place might restrict the number captured by one hunter, increase in the number of hunters, which

Comparison of sealing on land and at sea.

it is practically impossible to prevent, would quickly render such restriction valueless. As long as hunting was profitable it would be followed, and the profit considered would be that which is immediate. Hundreds of schooners under private direction would have little thought of the good of the many, and the effort of every individual would be to take as many seals as possible during the season, regardless of sex, age, or condition, for next year there may be no seals to take.

Decrease of herd caused by pelagic sealing.

Either pelagic sealing or killing on land must bear the responsibility for the decadence in seal life which has taken place during the last few years, and this decadence is known to have occurred contemporaneously with the development of pelagic sealing from a comparatively trifling industry (practised mostly by Indians and confined almost entirely to the North Pacific coast) to its present magnitude, such that, despite the presence of a considerable fleet of vessels of both the United States and Great Britain patrolling Bering Sea to declare it unlawful and to arrest those engaged in it, a pelagic catch of over sixty thousand seals was had in a single season. In view of this fact, and of the careful comparison which we have made of the two methods of taking seals, on land and at sea, and

Decrease of herd caused by pelagic sealing.

of their effects on the seal herd, we feel justified in declaring our belief that the great diminution in the number of seals on and frequenting the Pribilof Islands, which has been observed during the past few years, must be attributed to the evil effects of pelagic sealing.

Prohibition of pelagic sealing necessary.

Having found the source of the evil, it is easy to determine the remedy. The principal measure necessary for the protection and preservation of seal life in Bering Sea is one which must practically prohibit pelagic sealing. Argument on this point is unnecessary if we have succeeded in establishing the propositions already laid down in this report. It may be worth while, however, to refer briefly to one or two plans, restrictive as to time and place, which have been offered as a solution of this problem. It is evident that any scheme that contemplates continued license to pelagic sealing, even in a much restricted form, is not the logical outcome of the facts and circumstances as they exist to-day, and must fall short of accomplishing the desired result.

Limited protection inadequate.

A zone of prohibition inadequate.

Among other plans that have been suggested, is the establishment of a zone surrounding the islands outside of which pelagic sealing might be allowed and inside of which no sealing vessels should be permitted to go. This plan has the advantage of being satisfactory, if properly

A zone of prohibition inadequate.

executed. If the radius of this protected area is great enough to insure the exclusion of pelagic sealers from Bering Sea and the North Pacific Ocean it would be entirely acceptable. But when a radius of ten miles or of thirty or even fifty miles is suggested, the impression is strong that such a proposition is not intended to be seriously considered. An examination of the chart showing the location of sealers when warned in the summer of 1891 will show that they are widely distributed. On the occasion of our visit to the Pribilof Islands in July and August of that year seals appeared in considerable numbers while we were from one hundred and fifty to one hundred and seventy-five miles from the islands, and many were seen up to the time of our reaching the islands.

Discrimination by pelagic sealers impossible.

The possibility of properly executing any proposed scheme of protection must also have great weight in determining its value. For instance, a proposal to permit pelagic sealing with the condition that only barren females were to be hunted and killed would be quite free from objection, for if all such were destroyed the herd would not suffer. But the absurdity of such a proposition is at once evident to all who are familiar with the elements of the problem. The difficulty

Impossible to maintain a zone.

in maintaining a protected zone about the islands, the radius of which shall be comparatively small, will be clear to all who know the conditions prevailing in that part of the world. There is almost constant cloudiness and dense fog, and it is difficult for a vessel to know her own location within reasonable limits after having cruised about for a short time. The margin of uncertainty would be nearly as wide as the zone itself. Often the navigator receives his first information regarding the nearness to the islands by hearing the cries of the seals on the rookeries, which he can not see. Under such circumstances few arrests would be made of trespassing vessels that could not make a plausible plea in self-defense. In most cases it would be difficult to prove that the sealer was actually within the forbidden area.

A close season.

A more reasonable proposition is that involving a close time. A regulation fixing dates between which pelagic sealing would be everywhere forbidden would be of easy execution compared with the zonal restrictions. But, as already stated, to be of value it must be of such a nature as to practically prohibit the taking of seals at sea.

But it must practically prohibit.

Other remedies of no avail.

Other remedies have been proposed, but when examined they are found to have the vital defect of licensing or legitimatizing the evil practice

Other remedies of no avail.

which has already resulted so disastrously, and without any adequate means of controlling the magnitude of its developments. In short, if we do not wish the history of the fur-seal in Bering Sea to be a repetition of that of the rookeries of the Southern Ocean and of other localities where seals once flourished, measures adequate to the existing evil, heroic, if need be, must be adopted. In 1889, Prof. W. H. Flower, director of the Natural History Museum, London, wrote as follows, after referring to the total annihilation of the rookeries of the south seas: "Owing to the ruthless and indiscriminate slaughter carried on by ignorant and lawless sealers regardless of everything but immediate profit," he says, "The only spot in the world where fur-seals are now found in their original or even increased numbers is the Pribilof group, a circumstance entirely owing to the rigid enforcement of the wise regulations of the Alaska Commercial Company, which are based on a thorough knowledge of the habits of the animals. But for this the fur-seal might before now have been added to the long list of animals exterminated from the earth by the hand of man."

Prof. W. H. Flower.

Progress of extermination.

Less than three years have elapsed, and the catastrophe here hinted at is well under way. Its progress can be arrested only, we believe, by

Progress of extermination.

the acceptance of the principles stated above, which are the logical deductions from established facts.

Raids on the rookeries.

It may be worth while to add that the suggestion has been made that the decrease in the number of seals is due to piratical raids upon the islands themselves during the breeding season.

Comparison of raids and pelagic sealing.

While it is unquestionably true that such raids have occasionally occurred during the past, and that some skins have been obtained in that way, the number of these is so trifling in comparison with the annual pelagic catch as not to affect in any way the question under consideration. It is also difficult for one familiar with the rookeries and the habits of the seal to conceive of a raid being made without its becoming known to the officers in charge of the operations upon the islands. The "raid theory," therefore, may be dismissed as unworthy, in our judgment, of serious consideration.

Recommendation as to management of islands.

In addition to the establishment of such regulations as would practically suppress pelagic sealing, it is strongly recommended that killing on the islands be subjected to somewhat more strict and competent supervision. While it is not believed that any serious consequences have resulted from looseness in this respect, the inter-

Recommendation as to management of islands.

ests involved are so important, and in some respects so complicated, that too much care can not be given to the selection of the proper persons to be intrusted with their conservation. The practice of frequent changes in the Government agents is deplorable. They should be so familiar through association and observation with the appearance of the various rookeries as to be the first to notice any changes which may take place. They will thus be enabled to determine annually the number of seals which may be taken with safety and from what rookeries, whether the driving is properly conducted, etc., and their whole efforts should be directed to the preservation of the seal herd in its normal condition.

## SUMMARY.

Conclusions

Seals have decreased.

The number of seals frequenting the Pribilof Islands has greatly diminished during the past few years.

*Proofs.*—The physical condition of the rookeries and the testimony of natives and of Government officers and Company agents who have resided upon the islands for many years.

Decrease caused by pelagic sealing.

The decrease in the number of seals is the result of the evil effects of pelagic sealing.

*Proofs.*—The seal is polygamous ; many males may be killed without injury to the reproductive forces, but no females, except the barren. Killing on land may be and is selective ; no females are killed. Pelagic sealing is not and can not be selective ; a majority of seals killed are females. The presence of dead pups in great numbers on the rookeries last year proves that their mothers had been killed at sea while in search of food. Thus, for nearly every skin taken two seals were killed, to say nothing of wastefulness through failure to recover seals shot at sea.

There is no evidence of a lack of virile males on the rookeries.

Suppress pelagic sealing.

*Remedy.*—The suppression of pelagic sealing. When this is secured, the Government, insisting on a strict enforcement of its regulations through the agency of responsible and competent officers, can render this industry, so important and valuable to all the civilized world, as nearly perpetual as it is possible for man to determine.

THOMAS C. MENDENHALL.
C. HART MERRIAM.

WASHINGTON, *April* 15, 1892.

# Appendix A.

## SEALS SINK WHEN KILLED IN THE WATER.

It is well known that seals in general sink when killed in the water. To prevent the loss of such seals various devices are employed. In the Newfoundland and Labrador seal fisheries the great majority of the seals killed are taken on the ice, but some are shot in the water. In order to secure the latter, each hunter is provided with a reel of stout cord, to which is attached a lead weight bearing several large hooks. When a seal has been shot, the hunter holds the coil of loose cord in one hand, and swings the weight with the other until it attains sufficient momentum, when he lets it fly in the direction of the seal, hoping to overreach the animal, in which case the lead weight carries the hooks rapidly downward on the far side of the seal. By means of a strong pull on the cord, the hooks are made to take hold of the seal and he is drawn in.

Hair-seals.

In the North Pacific, the pelagic sealers are provided with slender poles, each bearing an iron hook at one end, with which they secure many seals that have begun to sink. In order

Fur-seals.

Fur-seals.

to use this pole, the hunter in his boat approaches the seal to within shotgun range; after firing, the oarsman propels the boat rapidly to the spot, thus enabling the hunter in an uncertain percentage of cases to reach the seal with his gaff.

Hair-seals.

Mr. Hinckelmann, Royal Superintendent of Fisheries, in an article entitled "Injuries to the Fisheries in the Baltic by Seals," states: "The seal when mortally wounded invariably sinks to the bottom, where, at least in deep water, it can not be reached. . . . The huntsman can only in very rare cases prove that his shot has been successful, as the dead seal can not be taken from the surface of the water, but sinks to the bottom." (Translated in Bull. U. S. Fish Commission, Vol. VII, for 1887–1889, p. 81.)

Antarctic fur-seals.

Captain Musgrave, who was shipwrecked on the Auckland Islands, and for a year and a half subsisted largely on the flesh of seals and sea-lions, states: "When they are killed in the water they sink like a stone." (Quoted by R. A. A. Sherrin in "Handbook of the Fisheries of New Zealand," 1886, p. 248.)

Hair-seals.

Payer and Copeland in their account of "Hunting and Animal Life in East Greenland," state respecting seals: "When dead they sink very quickly." (The Zoölogist, No. 124, 1876, p. 4744.)

Hair-seals.

Robert Warren, in a note in The Zoölogist for 1880 (3rd series, Vol. IV, pp. 358–359) states that a gray seal (*Halichœrus gryphus*) was shot in Killala Bay while in the act of devouring a fine salmon. "On receiving the ball through the hinder part of his head, he sunk out of sight, but was thrown ashore by the next tide, and even then retained a part of the salmon between his jaws."

Reason seals sink.

The reason seals in general sink when killed in the water is that the specific gravity of their flesh and bones collectively is considerably greater than that of water, while the specific gravity of the layer of fat beneath the skin is less than that of water. This layer of blubber is much thicker in the hair-seals than in the fur-seals, but is not thick enough to float the body; consequently, even the hair-seals sink when killed at sea. It is true that a certain percentage of seals killed in the water float long enough to be recovered. Such seals, as a rule, are shot through the lungs, permitting enough air to escape from the lungs into the body cavity and wounded tissues to cause them to float. Pelagic sealers admit that seals shot in the head, when the rest of the body is under water, are almost certain to sink before they can be reached.

# Appendix B.

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## DATES OF ARRIVALS OF FUR-SEALS AT PRIBILOF ISLANDS, 1871-1891.

*First arrival of bulls, cows, and pups at St. Paul Island, Bering Sea, 1872-1891, inclusive (from the official record).*

| Year. | Bulls. | Cows. | Pups. |
|---|---|---|---|
| 1872 | May 13 | June 3 | June 13 |
| 1873 | Apr. 24 | 8 | 25 |
| 1874 | 23 | May 24 | †11 |
| 1875 | 28 | June 7 | 10 |
| 1876 | May 3 | 5 | No record. |
| 1877 | 17 | May 25 | May 29 |
| 1878 | 6 | June 8 | No record. |
| 1879 | Apr. 29 | 16 | June 18 |
| 1880 | 30 | No record* | 10 |
| 1881 | May 5 | June 8 | 12 |
| 1882 | 26 | No record.* | No record. |
| 1883 | May 6 | do. | do. |
| 1884 | Apr. 30 | do. | do. |
| 1885 | 27 | do. | do. |
| 1886 | 16 | do. | do. |
| 1887 | May 1 | do. | do. |
| 1888 | 1 | do. | May 21 |
| 1889 | 3 | June ‡10 | June ‡10 |
| 1890 | Apr. 28 | 6 | 10 |
| 1891 | May 1 | 11 | 13 |

* On June 21 rookeries rapidly filling up.

† "Arriving in fair numbers."

‡ "Good many reported."

*First arrival of bulls, cows, and pups at St. George Island, Bering Sea, 1871-1891, inclusive (from the official record).*

| Year. | Bulls. | Cows. | Pups. |
|---|---|---|---|
| 1871 | May 4 | No record. | No record. |
| 1872 | 6 | do. | do. |
| 1873 | 10 | do. | do. |
| 1874 | 1 | June 7 | June 7 |
| 1875 | Apr. 26 | 9 | No record. |
| 1876 | Feb. 15* | 13 | do. |
| 1877 | May 8 | 8 | do. |
| 1878 | 10 | No record. | do. |
| 1879 | 10 | June 9 | do. |
| 1880 | 1 | No record. | do. |
| 1881 | 6 | June 9 | June 9 |
| 1882 | 2 | 9 | 11 |
| 1883 | 7 | 6 | 6 |
| 1884 | 4 | 7 | 10 |
| 1885 | Apr. 29 | 1 | No record. |
| 1886 | May 4 | 8 | June 8 |
| 1887 | 7 | No record. | No record. |
| 1888 | 8 | .... | May 31 |
| 1889 | 5 | May 31 | No record. |
| 1890 | Apr. 26 | No record. | do. |
| 1891 | May 5 | June 3 | June 10 |

* Large numbers in water.

# Appendix C.

### YOUNG SEALS ARE BORN ON LAND OR ICE; DO NOT SWIM AT FIRST, AND CAN NOT NURSE IN THE WATER.

All seals born on land or ice.

No species of seal in any part of the world gives birth to its young in the water, either among the sea-bears and sea-lions (*Otariidæ*) or among the true seals (*Phocidæ*). In the great majority of species the young are brought forth on rocks along the shore, but in a few kinds of hair-seals, notably the harps and hoods, they are born on the ice floes of the far north.

Nursing impossible in water.

Not only are all kinds of seals born on land (or ice), but they remain there while nursing, for seals can not suckle their young in the sea; the young are unable to hold their breath long, and would drown if they attempted to nurse in the water.

Young seals dread the water.

However strange it may seem to those unfamiliar with the facts, all young seals are afraid of the water at first and enter it with great reluctance. At the island of St. Paul, in August, we have seen mother seals take their young by the skin of the

Young seals dread the water.

back and carry them out into the water, much against the will of the young, and have seen this repeated several times before the young were permitted to land, which they did in a state of great excitement and fatigue. Captain Bryant, who spent many years at the Pribilof Islands as chief Government agent, states: "It seems strange that an animal like this, born to live in the water for the greater portion of its life, should be at first helpless in what seems to be its natural element, yet these young seals if put into it before they are five or six weeks old will drown as quickly as a young chicken. They are somewhat slow, too, in learning to swim, using at first only the fore flippers, carrying the hind ones rigidly extended and partially above water. As soon as they are able to swim (usually about the last week of August) they move from the breeding places on the exposed points and headlands to the coves and bays, where they are sheltered from the heavy surf, and where there are low sand beaches." (Bryant in Allen's Pinnipeds, 1880, p. 387.)

Captain Musgrave, who was shipwrecked on the Auckland Isles for more than a year and a half, has published some important notes respecting the sea-lions of those islands. Concerning the young, he states: "It might be supposed

Young seals dread the water.

that these animals, even when young, would readily go into the water—that being one of their natural instincts, but, strange to say, such is not the case: it is only with the greatest difficulty and a wonderful display of patience, that the mother succeeds in getting her young in for the first time. I have known a cow to be three days getting her calves down half a mile and into the water, and, what is most surprising of all, it can not swim when it is in the water."

# Appendix D.

## NATURAL ENEMIES.

The killer-whale.

The only important enemy of the fur-seal known to man is the killer-whale (*Orca gladiator*). These killers visit the islands on their way north about the end of April, and return in September. In the fall they hug the shore, keeping in the kelp or moving about the rocks as near inshore as they find sufficient water to float in. They are sometimes seen in squads circling round and round the islands, catching young pups by dozens. At first the pups are said to pay no attention to the enemy, sometimes swimming right into the killer's mouth, but before the end of the season they learn what the presence of the killer means, and rush out of the water and up on the rocks whenever one comes near shore. The killers generally arrive early in September, and remain as long as the pups stay, which is usually until the latter part of November.

# Appendix E.

## FOOD OF THE FUR-SEAL.

### CONTENTS OF STOMACHS OF FUR-SEALS KILLED AT THE PRIBILOF ISLANDS.

*August* 1–3, 1891.

Examination made on Pribilof Islands.

One hundred and eighteen stomachs of fur-seals were examined jointly by the United States and British Bering Sea Commissioners at St. Paul and St. George Islands, August 1 and August 3, 1891, with the following results:

Contents of stomachs.

All the stomachs were opened immediately after the seals were killed. Ninety-three out of the one hundred and eighteen were empty, except for the presence of a little mucus, bile, frothy slime, dark brownish blood, and parasitic worms. Blood in some form was present in five stomachs, and nematode worms about three inches in length were found in most of the stomachs opened.

Twenty contained pebbles, or pebbles and beach-worn shells, either alone or in connection with other contents, the quantity varying from a single small pebble to a handful.

Contents of stomachs.

Four contained beaks of squid or cuttlefish (identified by Dr. William H. Dall as probably *Gonatus fabricii*), of which three sets were in one stomach, two sets in another, and one each in the remaining two.

Two contained fish bones, of which one consisted of the vertebræ and a few other bones of a cod (*Gaddus morrhua*); the other the ear bones of a similar fish.

One contained a large Isopod crustacean (identified by Prof. Sidney I. Smith as "apparently a species of *Rocinela*, a genus very close to Æga.")

One contained a small bit of kelp.

## CONTENTS OF STOMACHS OF FUR-SEALS KILLED IN THE NORTH PACIFIC OCEAN.

### *April* 22–*May* 1, 1892.

Examination made at Washington, D. C.

The stomachs of 104 fur-seals killed by pelagic sealers in the North Pacific off southeastern Alaska, April 22–May 1, 1892, between latitude 56° 45′ and 58° 58′, and mostly sixty to eighty miles from shore, were examined by the naturalist of the United States Fish Commission steamer *Albatross*. Of the 104 stomachs, 67, or 64.4 per cent. were empty. Of the remaining 37, 30 contained 37 fishes and 18 contained 728 squids or cuttlefish.

Contents of stomachs.

Most of the stomachs containing food have been submitted to us for examination, and the fishes have been identified by Dr. Tarleton H. Bean, Ichthyologist of the United States Fish Commission.

Of the 30 containing fishes, 15 contained red rock fish or rock cod (*Sebastichthys*, 5 of which were found in 1 stomach, making 19 in all), 2 contained salmon, 2 pollock (*Pollachius chalcogrammus*), 2 ling, 1 stickleback (*Gasterosteus cataphractus*), and 9 small fishes too much digested to admit of ready identification. Two contained pebbles, and several intestinal worms.

Although squids were found in only 18 of the 37 stomachs containing food, a large number were generally found in each stomach—as many as 419 beaks in one instance, and 319 in another. In all, 1,456 beaks, representing 728 squids, were found in the 18 stomachs, an average of 40½ to each seal. Owing to the small size of the individual beaks, particularly those of the younger squids, many were probably lost in emptying and transferring the stomach contents, so that the number here given is certainly below the number originally contained.

Conclusion as to food and feeding.

The examination of these stomachs shows that the fur-seals are chiefly surface feeders, the only food found from moderate depths being the red rock fish or rock cod (*Sebastichthys*), of which all the specimens obtained belong to a species of whose haunts and habits nothing is known.

NOTE.—Appendix E, on the food of the fur-seal, has been completed since the foregoing report and Appendices A to D were written.

THOMAS C. MENDENHALL.
C. HART MERRIAM.

WASHINGTON, D. C., *June* 30, 1892.

# SUBJECT-INDEX OF CASE.

Page

Acquiescence. (*See* Great Britain; jurisdiction over Bering Sea.)

Action of the United States relative to Alaska since the cession .... .... .... 78-86
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UNITED STATES. No. 7 (1893).

## BEHRING SEA ARBITRATION.

# THE COUNTER CASE

OF

# THE UNITED STATES

BEFORE THE

# TRIBUNAL OF ARBITRATION

CONVENED AT PARIS

UNDER THE

PROVISIONS OF THE TREATY BETWEEN THE UNITED
STATES OF AMERICA AND GREAT BRITAIN,
CONCLUDED FEBRUARY 29, 1892.

*Presented to both Houses of Parliament by Command of Her Majesty.*
*March* 1893.

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# COUNTER CASE
OF
# THE UNITED STATES.

---

## INTRODUCTION.

Counter Case.

Pursuant to Article IV of the Treaty of Arbitration of 1892, between the United States and Great Britain, the Agent of the United States herewith presents to the Tribunal of Arbitration the Counter Case of his Government, accompanied by certain additional documents, correspondence, and evidence, in reply to the Printed Case, documents, correspondence, and evidence heretofore submitted by Great Britain.

Object of same.

The United States conceive it to be the main object of the Counter Cases to present matter in rebuttal of such points raised by the Cases as have not already been sufficiently dealt with, and could not reasonably have been so dealt with, therein. They do not, therefore, regard themselves as now called upon to traverse all the posi

Object of same.

tions maintained by Great Britain in its Printed Case, and, where any of such positions not discussed or refuted herein are at variance with those assumed by the United States in their Printed Case, the Tribunal is respectfully referred to that document for a sufficient expression of their views concerning the matters in controversy.

The United States will deal more fully and at later stages of this controversy, through the printed and oral arguments of their Counsel, with all matters requiring argumentative discussion.

Original British Case and supplement.

On the 5th day of September, 1892, the Agent of the United States received from the Agent of Her Britannic Majesty copies of the Printed Case of Great Britain. The United States considered that the Case thus presented was not a full compliance with the terms of the Treaty. A diplomatic correspondence between the two Governments followed, in which the position of the United States in regard to this matter was fully set forth,[1] and, as a result of this correspondence, Her Majesty's Government delivered to the Agent of the United States and to the Arbitrators the Report of its Bering Sea Commission, accompanied by the Statement that the Government of the United States was at liberty to treat this Report as a part of the British Case. The United

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[1] *Post*, p. 139.

States have accordingly notified Her Majesty's Government that they regard the Case first presented and the above Report, taken together, as the whole of the British Case, and that no further opportunity is afforded under the Treaty for the introduction of matter not properly in reply to the Case of the United States.[1]

Original British Case and supplement.

For the sake of more convenient reference the term "British Case," when standing alone, will refer to that portion of the same first presented. The term "Report" will refer to the portion last presented, consisting of the Report aforesaid.

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[1] *Post*, p. 147.

# PART FIRST.

## REPLY OF THE UNITED STATES TO THE BRITISH CASE FIRST PRESENTED.

# PART FIRST.

## REPLY OF THE UNITED STATES TO THE BRITISH CASE FIRST PRESENTED.

### THE TRUE ISSUES IN THE PRESENT CONTROVERSY.

Difference of views as to object of Arbitration.

It appears, from an examination of the British Case and the diplomatic correspondence above referred to, that a different opinion is entertained by the two Governments as to the object and scope of the present Arbitration. That Case is devoted almost exclusively to showing that the Government of the United States is not entitled to exercise territorial jurisdiction over the waters of Bering Sea or to exclude therefrom the vessels of other nations. On the other hand, the Case of the United States makes it plain that the main object had in view by the latter Government is the protection and preservation of the seal herd which has its home on the Pribilof Islands.

Protection of seals the main object of Arbitration.

The distinction between the right of general and exclusive jurisdiction over Bering Sea and the right to protect the seals from extermination is wide and obvious. In order, therefore, to show

Protection of seals the main object of Arbitration.

that the latter, and not the former, is the main question before the Tribunal, the Agent of the United States deems it proper to place clearly before it some important considerations touching the manner in which the controversy resulting in the Treaty of Arbitration arose, and to indicate what have at all times been regarded by the United States as the essential issues.

Origin of jurisdictional controversy.

The diplomatic correspondence shows that as early as the year 1887 the United States claimed a property interest in the seals of the Pribilof Islands; that the question of sovereignty over Bering Sea was first introduced by Her Majesty's Government and was not touched upon by the United States in the correspondence until three years after the first seizures of British vessels had taken place; and that the subsequent discussion of that question has been at all times incidental to the main question,[1] viz., the proper protection of the seals.

Lord Salisbury refers to Russian ukase.

On the 10th of September, 1887, Lord Salisbury, in a note to the British Minister at Washington calling attention to the transcript of the judicial proceedings in the cases of the *Carolena*, *Onward*, and *Thornton*, referred to the ukase of

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[1] Mr. Blaine to Sir Julian Pauncefote, June 4, 1890, Case of the United States, Appendix, Vol. 1, p. 218, and also closing portion of Mr. Blaine's note to Sir Julian Pauncefote, December 7, 1890, *ibid.*, pp. 286, 287.

1821 and the treaties of 1824 and 1825, and insisted that they were conclusive in favor of Great Britain's right to take seals throughout Bering Sea.[1]

**Mr. Bayard invites international coöperation.**

The United States Government did not reply to the point thus raised. On the contrary, on the 19th of August, 1887, Mr. Bayard, Secretary of State, had already sent out to various foreign governments a note,[2] in which he said: "Without raising any question as to the exceptional measures which the peculiar character of the property in question may justify this Government in taking, and without reference to any exceptional marine jurisdiction that might properly be claimed for that end, it is deemed advisable . . . to obtain the desired ends by international cooperation."

This was followed on the 7th of February, 1888,[3] by a note addressed to Mr. Phelps containing general suggestions for international action, which, in principle, appear to have been assented to by Lord Salisbury.[4]

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[1] Appendix to Case of the United States, Vol. I, p. 162.

[2] Appendix to Case of the United States, Vol. I, p. 168.

[3] Appendix to Case of the United States, Vol. I, p. 172.

[4] Appendix to Case of the United States, Vol. I, pp. 175, 212, 218.

Mr. Bayard invites international coöperation.

On the 2d of March, 1888, Mr. Bayard again insisted on the necessity of protecting the seals "by an arrangement between the governments interested, without the United States being called upon to consider what special measures of its own the exceptional character of the property in question might require it to take, in case of the refusal of foreign powers to give their coöperation."[1] At pages 168 to 194 of Volume I of the Appendix to the Case of the United States will be found the correspondence relating to the proposed international measures.

Mr. Blaine's statement of the issues.

On the 22d of January, 1890, Mr. Blaine, Secretary of State, wrote to Sir Julian Pauncefote, Her Majesty's Minister: "In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that was *contra bonos mores*, a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and the people of the United States. To establish this ground it is not necessary to argue the question of the extent and nature of the sovereignty of this Government over the waters of the Behring Sea; it is not necessary to explain, certainly not to define, the powers and privileges ceded by His Imperial Majesty the

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[1] Appendix to Case of the United States, Vol. I, p. 175.

Mr. Blaine's statement of the issues.

Emperor of Russia in the treaty by which the Alaskan Territory was transferred to the United States. The weighty considerations growing out of the acquisition of that Territory, with all the rights on land and sea inseparably connected therewith, may be safely left out of view, while the grounds are set forth upon which this Government rests its justification for the action complained of by Her Majesty's Government."[1]

Justification of seizures.

The grounds set forth were these:

(1) The value of the sealeries and the absence of any interference with them down to 1886.

(2) That the taking of seals in the open water rapidly leads to their extermination, because of the indiscriminate slaughter of the animal, especially of the female; with which slaughter Mr. Blaine contrasts the careful methods pursued by the United States Government in killing seals upon the Islands.

(3) That the right of defense by the United States against such extermination is not confined to the three-mile limit, and Mr. Blaine remarks as follows: "Does Her Majesty's Government seriously maintain that the law of nations is powerless to prevent such violation of the common rights of man? Are the supporters of justice in

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[1] Appendix to Case of the United States, Vol. I, p. 200.

Justification of seizures.

all nations to be declared incompetent to prevent wrongs so obvious and so destructive?

"In the judgment of this Government, the law of the sea is not lawlessness. Nor can the law of the sea, and the liberty which it confers, and which it protects, be perverted to justify acts which are immoral in themselves, which inevitably tend to results against the interests and against the welfare of mankind."[1]

Lord Salisbury again introduces ukase.

These were the questions involved, according to the view of the Government of the United States. But, notwithstanding the clear manner in which they were presented, and the explicit statement of Mr. Blaine that the right of the United States to protect the seal does not depend upon the nature of their sovereignty over the waters of Bering Sea, Lord Salisbury in his note of May 22, 1890,[2] again recurs to that subject by quoting Mr. Adams's protest against the ukase of 1821, relying thereon to establish the right of British subjects to fish and hunt throughout Bering Sea, outside the three-mile limit, which right, granting it to exist, Mr. Blaine had already stated, would not afford the requisite justification.[3]

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[1] Appendix to Case of the United States, Vol. I, p. 200.

[2] Appendix to Case of the United States, Vol. I, p. 207.

[3] Appendix to Case of the United States, Vol. I, p. 202.

United States sought international agreement.

It thus appears that at the inception of this controversy the United States asserted no right to sovereignty over Bering Sea, but sought the concurrence of Great Britain in an international agreement for the protection of the seals, and that it was not until after this effort had failed, on account of the opposition of the Canadian Government,[1] that the Government of the United States undertook a reply to Lord Salisbury's assertion that the treaties of 1824 and 1825 with Russia precluded it from protecting the seals in Bering Sea beyond the three-mile limit. It was in this manner that the first four questions stated in the Treaty of Arbitration were raised. It is not intended to say that they did not occupy a prominent place in the diplomatic correspondence, but only to point out that, long before they had arisen, the other and more important issues submitted to this Tribunal had been the subject of elaborate discussion between the two Governments.

## THE ERRONEOUS TRANSLATIONS OF CERTAIN RUSSIAN DOCUMENTS.

Imposition practiced upon United States Government.

Sometime after the United States Government had delivered its case to the Agent of Her Britannic Majesty, it learned that an imposition

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[1] Appendix to Case of the United States, Vol. I, pp. 215, 216, 218.

Imposition practiced upon United States Government.

had been practiced upon it by a faithless official, and that it had relied on certain translations of Russian documents made by him, appearing in the first volume of the Appendix to its Case, which translations had in reality been falsified to a considerable extent. Notice of this was immediately given to the Agent of Her Britannic Majesty, and as soon as possible he was furnished with specifications of the false translations and with revised translations of those documents which the United States now retain as a part of their Case.[1] Copies of the revised translations and of the notes sent by the Agent of the United States to the Agent of Her Britannic Majesty in connection with this matter have already been delivered to each of the Arbitrators.

Partial restatement of its Case necessary.

Some evidence which the United States Government had relied on, to prove that for many years prior to the time of the cession of Alaska Russia had prohibited the killing of fur-seals in the waters frequented by them in Bering Sea, thus turns out to be untrue; and it now becomes necessary for the United States to restate, in part, their position in respect to some of the questions submitted to this Tribunal. In so doing they will at the same time introduce such criticisms upon, or rebutting evidence to, the British Case as may seem to be called for.

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[1] *Post*, pp. 151–174.

### THE SITUATION ABOUT BERING SEA AND ON THE NORTHWEST COAST DOWN TO THE TREATIES OF 1824-'5.

Russia's colonial system.

Russia appears to have first definitely asserted her rights to the territory surrounding Bering Sea, and to the Northwest Coast of America bordering upon the Pacific Ocean, in the ukase of 1799. It was clearly the intention of the Russian Government, as manifested both by this ukase and by its subsequent action down to the time of the cession of Alaska to the United States, to maintain a strict colonial system in the regions above mentioned. And the records show that down to a period as late as 1867, the year of the cession of Alaska, Russia persisted in this policy, although the control she exercised over those distant regions was not always vigilant enough to prevent a certain amount of unlawful trade with the natives from being carried on there in disregard of her prohibition.

Ukase of 1799.

The ukase of 1799 was directed against forigners. Upon this point a quotation is given from a letter from the Russian American Company to the Russian Minister of Finance under date of June 12, 1824, as follows:[1] "The exclusive right granted to the Company in the year 1799 imposed the prohibition to trade in those

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[1] A facsimile of this document was delivered to the British Government on November 12, 1892.

Ukase of 1799.

regions, not only upon foreigners but also upon Russian subjects not belonging to the Company. This prohibition was again affirmed and more clearly defined in the new privileges granted in the year 1821, and in the regulations concerning the limits of navigation." This interpretation of the ukase of 1799 is sustained by the subsequent history of those same regions.

Chapter I of British Case.

In Chapter I of the British Case an endeavor is made, however, to show that under the ukase of 1799 Russia reserved to the Russian American Company no exclusive rights as against foreigners, and that for many years prior to 1821 the waters affected by the ukase had been freely used for all purposes by vessels of all nations. This is sought to be made out by treating the waters of Bering Sea and those adjoining the Northwest Coast of America as a single area;[1] and numerous instances are referred to in which portions of this area, namely, the shores and waters of the American Coast east and south of Kadiak, were visited by foreigners for trade with the natives.

Distinction between Bering Sea region and Pacific Ocean.

The territories and waters which the British Case thus confounds the United States have carefully distinguished, and they take issue with Her Majesty's Government upon the point that

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[1] British Case, p. 13.

Distinction between Bering Sea region and Pacific Ocean.

"no claim has been advanced by Russia which could possibly render a distinction between Behring Sea and the main Pacific of the slightest importance" (British Case, p. 60). The United States have devoted a portion of their Case, under the title, "Claims to the Northwest Coast" (pp. 26 to 33), to showing that the part of the American continent which is washed by the North Pacific Ocean was being constantly visited by vessels of all nations, and that serious conflicts arose as to the trading rights there. Indeed, of all the voyages of foreign vessels, whether for discovery or trade, enumerated at pp. 14 to 20 and 29 to 31 of the British Case, not more than two or three relate to the shores and waters of Bering Sea. The fact is, that, while Russia's title to everything south and east of the Alaskan Peninsula was, in the early part of this century, in serious dispute, her title to the coasts north of this peninsula and to the Aleutian Islands, based upon prior discovery and occupation, was admitted on all sides, and her rights there were respected by all nations. This has already been pointed out.[1]

The British contention (British Case, pp. 33, 35, 64) that the United States contested Russia's

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[1] Appendix to Case of the United States, Vol. I, pp. 12, 13, especially the extracts from the Quarterly Review and the North American Review.

Distinction between Bering Sea region and Pacific Ocean.

title to any portion of the North American continent is sufficiently disposed of by a remark made by Mr. Middleton, in which he shows that he is merely denying her claims to any portion of the coast east and south of Prince William Sound, or thereabouts. He says, speaking of the early Russian discoveries: "From these discoveries Russia derives her rights to that long chain of islands intervening between the western and eastern continents, and even to a very considerable portion of the continent of America—rights which have never been contested."[1]

Ukase of 1821.

The ukase of 1821, which was a renewed declaration of the colonial system already referred to, prohibited to foreign vessels the approach within one hundred miles to the shores of Bering Sea and to a large portion of the Northwest Coast of America bordering on the Pacific Ocean. The objects thereby sought to be accomplished are set forth at pp. 38 to 40 of the Case of the United States.

Character of control claimed over Bering Sea.

Much misconception exists in the British Case as to the character of the control which the United States claim was exercised or intended to be exercised by Russia within this limit. The Government of the United States has already shown, at p. 57 and pp. 295 to 303 of its Case, that it does

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[1] Appendix to Case of the United States, Vol. I, p. 13, and American State Papers, Foreign Relations, Vol. V, p. 450.

Character of control claimed over Bering Sea.

not impute to Russia an intention to treat the one-hundred-mile belt as territory belonging to her, with the right to exclude therefrom vessels of other nations for all purposes. Nor have the United States any wish to dispute the construction given by the British Government at pp. 38 to 40 of its Case, so far as it is designed to show that the main purpose of the ukase of 1821 was the protection of Russian interests upon the shores of the colonies, and that its maritime provisions were only intended to serve the purpose of effectually carrying out such protection.

No exclusive territorial jurisdiction claimed.

The distinction between the right of exclusive territorial jurisdiction over Bering Sea, on the one hand, and the right of a nation, on the other hand, to preserve for the use of its citizens its interests on land by the adoption of all necessary, even though they be somewhat unusual, measures, whether on land or at sea, is so broad as to require no further exposition. It is the latter right, not the former, that the United States contend to have been exercised, first by Russia, and later by themselves.

Protests against ukase, and resulting treaties.

The ukase of 1821 evoked strong protests, and the character of these protests is explained at pages 50 and 51 of the Case of the United States. It is further pointed out at pages 52 and 53 that in the treaties resulting from these protests

Protests against ukase, and resulting treaties.

a clear distinction is intended to be drawn between the Pacific Ocean and Bering Sea, and that by formally withdrawing the operation of the ukase as to the Pacific Ocean, but not as to Bering Sea, a recognition of its continued operation over the latter body of water was necessarily implied. The chief evidence, aside from that contained in the treaties themselves, upon which the United States rely to establish this conclusion, is the seventh paragraph of the conference report of the Russian imperial committee, appointed in 1824, which report is referred to at page 54 of their Case.[1]

Case of the *Pearl*.

At pages 57 and 73 of the British Case an incident arising out of a voyage of the American brig *Pearl* is cited to prove that, in the year following the promulgation of the ukase, Russia acknowledged the maritime jurisdiction claimed therein to be without warrant as to any of the waters to which it related. The facts of the case are not, however, susceptible of such an interpretation, as will appear from the following:

(1) The *Pearl* was in the year 1822 suddenly ordered out of the harbor of New Archangel, where she had been lying for nearly a month.[2]

(2) The day following she was boarded by the

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[1] The revised translation of this report appears in the Appendix to the Counter Case, p. 157, and should be consulted.

[2] *Post*, p. 175.

Case of the *Pearl.*

Russian cruiser *Apollo*, but there is no evidence to show that this boarding occurred in extraterritorial waters; on the contrary, the just inference from the words used in the protest "Ordered to leave the coast immediately," and from the single casual mention of the occurrence, is that it took place near the shore.[1]

(3) The owners not only pleaded complete ignorance of the ukase (and in this they were sustained by the fact that the vessel had sailed before the United States had received notice of the same), but they distinctly admitted that they would have obeyed its injunctions had they known of it.[2]

(4) The Russian Government insisted up to the very last that the *Pearl* had violated Russian law, and that the indemnity was paid only with a view "to cement those amicable relations to which the convention of April 5–17 had just added new value."[3]

### PERIOD FOLLOWING THE TREATIES.

Continuation of colonial system.

The strict colonial system, inaugurated by Russia through the ukase of 1799 and recognized in express terms to exist by the treaties of 1824 and 1825, was continued throughout the period following the celebration of those treaties, and clear evidence of this is furnished by the case of the *Loriot*, cited at pp. 79 to 83 of the British Case. Deeming this incident only indirectly relevant to the question of right in and about Bering Sea, the United States dismissed it in their Case with a very brief mention;[1] but the importance given it by the British Government now requires a more complete statement of the facts and issues involved.

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[1] *Post*, p. 176.
[2] *Post*, p. 177.
[3] *Post*, p. 180.

Case of the *Loriot*.

The treaty of 1824 granted for a term of ten years certain trading privileges upon the coast between Yakutat Bay and latitude 54° 40′ north.[2] On May 19, 1835, the United States were notified by the Russian Minister that the privileges had come to an end and that the captains of two American vessels at Sitka had been requested to take notice of this fact. The United States thereupon initiated strenuous efforts to obtain a renewal of the privileges in question, and while doing so news was received of the seizure by the Russians of the *Loriot*, an American vessel, for trading upon the Northwest Coast, in latitude 54° 55′ north, *i.e.*, just above the southernmost limit referred to in the treaty of 1824.

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[1] Case of the United States, p. 59.

[2] Case of the United States, p. 58.

Case of the *Loriot.*

Vigorous protests followed on the part of the United States and compensation was demanded, the protests being used to strengthen the claim already put forward for a renewal of the ten years' privileges. A summary of the diplomatic correspondence will be found in the Appendix hereto.[1] It is sufficient to say here that the Russian Government was so obdurate in its refusal to recede from its position, that the United States Government was eventually compelled to recognize the correctness of the same and to completely abandon its claim. In so far, then, as the *Loriot* case has any bearing upon the questions here involved, it shows that the United States Government recognized and acquiesced in the colonial system which Russia maintained, even to the south of Sitka.

Chapter IV of the British Case.

Chapter IV of the British Case treats of the waters of Bering Sea and the Pacific Ocean adjacent to the Northwest Coast during the period following the treaties. Some of the vessels referred to as having made voyages to those regions visited the Northwest Coast only where, it is to be remembered, for ten years after the treaties trade was carried on by American and British citizens with the express consent of the Russian Government. After 1835, however, most of the

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[1] *Post*, p. 180-184.

Chapter IV of the British Case.

voyages that extended to the coast north of latitude 54°40′ were in violation of Russian law. All violations may not have been punished, but that the law was none the less in force is shown by the seizure of the *Loriot*, by the proclamation of the United States Government in 1845,[1] and by the proclamation of the Russian Government in 1864.[2]

Visits of whalers to Bering Sea.

Later, however, especially in the years following 1840, Bering Sea was actually visited, as pointed out at pp. 83 to 90 of the British Case, by numerous vessels, mostly whalers. But it is shown by Bancroft, the author so frequently quoted by the British Government, that the whaling industry was not, for the Russians, a profitable one,[3] and there appears to have been no motive for protecting that industry by the imperial ukase or the regulations of the colonial government. Bancroft is also referred to in the British Case (pp. 83 and 84) to show that in 1842 the Russian Government refused Etholin's request that Bering Sea be protected against invasions of foreign whalers, on the ground that the treaty of 1824 between Russia and the United States gave to American citizens the right to engage in fishing over the

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[1] Case of the United States, p. 59.

[2] *Post*, p. 164.

[3] Bancroft's Alaska, p. 584.

Visits of whalers to Bering Sea.

whole extent of the Pacific Ocean.[1] From what is said, however, by this same author immediately following the above citation, it appears that, through the endeavours of Etholin, "the Government at length referred the matter to a committee composed of officials of the navy department, who reported that the cost of fitting out a cruiser for the protection of Bering Sea against foreign whalers would be 200,000 roubles in silver and the cost of maintaining such a craft 85,000 roubles a year. To this a recommendation was added that, if the company were willing to assume the expenditure, a cruiser should at once be placed at their disposal."[1] Hence, according to Bancroft, the failure to protect Bering Sea can not be traced to the fact that the Russian Government considered it had lost the right to do so by the treaties of 1824 and 1825.

Right to protect seals not relinquished.

The position of the United States does not, however, depend on the foregoing explanation being the true one. Why Russia claimed to guard her coasts for a distance of 100 miles has already been pointed out; and from the fact that, for whatever reason, she may have suffered the carrying on of whaling or of any sort of *fishing* in Bering Sea, it does not follow that she relinquished her clear right to protect her seal herds on their way to and from their breeding grounds.

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[1] Bancroft's Alaska, p. 583.

Evidence of surveillance over Bering Sea.

Even as to the whalers this much is certain: their movements were, after the year 1850, or thereabouts, closely watched; and in support of this, and of the broader proposition that a general surveillance was exercised over the colonial seas, the following evidence is offered.

It appears that in 1849 foreign whalers visited the Pribilof Islands. This evoked from the board of administration of the Russian American Company a letter to the chief manager, dated July 13, 1850, in which it is said: "At the same time the board of administration expects that you, like your predecessor, have taken all necessary measures for guarding the Pribilof Islands, which are of such importance to the Company, from a repetition of similar attempts on the part of foreigners. In future, and until the clearing of those waters from whalers by means of a cruiser, of whose sending the board has already received information, you are directed to order the Company's cruisers to pay particular attention to the Pribilof Islands."[1]

On the 18th of April, 1852, the board of administration again wrote the chief manager concerning the visits of foreign whalers, and

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[1] *Post*, p. 199.

**Evidence of surveillance over Bering Sea.**

stated that it had requested the governor-general of Eastern Siberia, "in order to save the Company from injury caused by such occurrences, to issue instructions, making it the duty of such armed cruisers as his excellency may have at his disposition to patrol the colonial seas, especially around the Commander Islands," where the foreign whalers were reported to assemble in great numbers in the summer season. Continuing, the board directed the chief manager "to fit out a Company's cruiser, independently of the naval cruiser, and to instruct it to cruise in those places where, on close investigation, it may appear necessary."[1]

On the 20th of March, 1853, the board of administration of the Russian American Company wrote to the chief manager, giving full directions as to the disposition to be made of the colonial fleet in that year. One vessel was to "be sent at the end of April to cruise and keep a watch over the foreign whaling vessels in the southern part of Bering Sea, and along the Aleutian group," and this vessel was to cruise throughout the above district continually, entering port only in cases of necessity. Another vessel was to proceed to the northern part of Bering Sea and there do duty as a cruiser "to keep watch over the foreign whalers and the

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[1] *Post*, p. 200.

**Evidence of surveillance over Bering Sea.**

Englishmen with regard to the trade carried on by them with our savages."[1]

One of the concluding injunctions of this letter to the chief manager is as follows: "That the colonial seas, so far as possible, be visited in every part by the Company's cruisers for the purpose of keeping watch over the foreigners, and for this purpose, in giving instructions to our cruisers, that you conform yourself to the intended movements of the Company's whaling vessels, which can also do duty as cruisers if they are carrying on their fishery in Bering Sea, and provide that the Company's vessels designated for visiting the many islands of the colonies be, so far as possible, under the command of naval officers."[1]

On the 20th of June, 1861, the chief manager wrote to Benzeman, of the imperial navy: "It has come to my knowledge that two whaling vessels have been sent this year from San Francisco to trade on the Pribilof Islands. I therefore request your excellency, during the time appointed for your voyage, to do duty as a cruiser on the exact basis of the instructions herewith inclosed, which have been approved by the Emperor."[2]

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[1] *Post*, p. 161.

[2] *Post*, p. 162.

Conclusions from foregoing evidence.

While it does not appear from any of the foregoing documents to what distance from the shores of Bering Sea Russia actually sought to protect her colonies against inroads from foreigners, yet there is nothing to show that she had in the meanwhile receded from the position taken in the ukase of 1821 and sanctioned, as the United States claim, by the resulting treaties. On the contrary, the broad language in which a patrol of the colonial seas is directed to be instituted, especially about the Pribilof and Commander Islands, strongly suggests that even at this late period Russia was still safeguarding her colonial interests by all necessary means.

Russia's action in 1892.

It is true, no instance appears to have been recorded where a vessel was warned or seized for actually killing fur-seals in the waters of Bering Sea. But in view of what we know of Russia's solicitude and care for her sealeries, especially in the years following 1836, it can not be doubted that such killing, had it occurred, would have been regarded as unlawful. In making this assertion the United States believe they are fully sustained by Russia's action during the summer of 1892. In that year sealing vessels assembled in great numbers about the Commander Islands and killed fur-seals in the extra-territorial waters surrounding this group. Russia,

Russia's action in 1892.

anticipating that her seal herd would be thus preyed upon, had dispatched to those waters in the early part of the season two cruisers, which seized six vessels, five of them British and one of them American, carrying them in from a distance greater than three miles from any land.[1]

Final observations upon historical and jurisdictional questions.

In conclusion, and by way of final observation upon this branch of the controversy, the United States Government has only to say that in its view the whole subject of the character and extent of the Russian occupation and assertion of right in and over Bering Sea, and all the diplomatic discussion which has taken place in reference thereto, is of secondary and very limited importance in the consideration of the case submitted to the Tribunal, and it relies upon the evidence submitted in respect to that subject as showing only:

First. That soon after the discovery by Russia of the Alaskan regions, and at a very early period in her occupancy thereof, she established a fur-seal industry on the Pribilof Islands and annually killed a portion of the herd frequenting those islands for her own profit and for the purposes of commerce with the world; that she carried on, cherished, and protected this industry by all necessary means, whether on land or at

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[1] *Post*, p. 201.

Final observations upon historical and jurisdictional questions.

sea, throughout the whole period of her occupancy and down to the cession to the United States in 1867; and that the acquisition of it was one of the principal motives which animated the United States in making the purchase of Alaska.

Second. That by no act, consent, or acquiescence of Russia was the right renounced to carry on this industry without interference from other nations, much less was a right in other nations to destroy it in any manner admitted or recognized; and that no open or known persistent attempt had ever been made to interfere with it down to the time of the cession of Alaska to the United States.

Third. That the claim now made by the United States Government of a right to protect and defend the property and interest thus acquired, and which it has ever since sedulously maintained, while in no sense dependent upon any right previously asserted by Russia in the premises, is, nevertheless, in strict accordance with, and in continuation of, the industry thus established and the rights asserted and maintained by Russia in connection therewith.

## THE RIGHT OF PROTECTION AND OF PROPERTY IN THE ALASKAN SEAL HERD.

British view of protection and property claims.

At pages 11 and 135 of the British Case the proposition submitted in the fifth question of Article VI, viz, whether the United States have any right of protection or of property in the fur-seals of the Pribilof Islands when found in extra-territorial waters, is described as new in the present discussion and as being of an unprecedented character; all of which the United States deny.

History of protection and property claims.

In view of the correspondence which has resulted in the submission of the fifth question to arbitration, this declaration is most surprising. As early as August 19, 1887, Mr. Bayard, in his note, sent out with the hope of obtaining the co-operation of all governments in the protection of the seals, speaks of the "exceptional measures which the peculiar character of the property in question" might justify the United States in taking towards its preservation.[1] A similar statement was again made by him March 2, 1888.[2]

Mr. Blaine insists on right of protection.

Mr. Blaine, in his note to Sir Julian Pauncefote of January 22, 1890, insisted on the right of the United States to protect the seals, quite irrespective of any peculiar rights in Bering Sea.[3]

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[1] Appendix to Case of United States, Vol. I, p. 168.

[2] Appendix to Case of United States, Vol. I, p. 175.

[3] Appendix to Case of United States, Vol. I, p. 200.

Mr. Blaine insists on right of protection.

This note has already been referred to at some length (*ante*, p. 10), and some of the grounds have been pointed out upon which the United States Government deemed itself justified in its action. Mr. Blaine assimilated this right of protection to that conferred upon Great Britain by her "ownership" of the Ceylon pearl fisheries. Although it is not specifically claimed therein that the United States own the seals, yet the point is strongly suggested, while the right of protection, irrespective of strict ownership, is asserted in clear terms.

Mr. Blaine asserts ownership in seals.

On June 4, 1890, Mr. Blaine wrote to Sir Julian Pauncefote: "May I ask upon what grounds do the Canadian vessels assert a claim, unless they assume that they have a title to the increase of the seal herd? If the claim of the United States to the seals of the Pribilof Islands be well founded, we are certainly entitled to the increase as much as a sheep-grower is entitled to the increase of his flock."[1]

Jurisdictional questions not the true issues.

On the 17th of December, 1890, Mr. Blaine addressed to the British Minister an exhaustive note in relation to the construction of the ukase of 1821 and the treaties of 1824 and 1825.[2] Notwithstanding the earnestness and vigor with

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[1] Appendix to Case of United States, Vol. I, p. 219.

[2] Appendix to Case of United States, Vol. I, p. 263.

Jurisdictional questions not the true issue.

which he had defended his position based upon those documents, he insisted at the close of his note that he had not been dealing with the true issues in the case; and he forthwith proceeded to state those issues by quoting the following from a despatch written by Mr. Phelps when United States Minister at London to Mr. Bayard, Secretary of State, on the 28th of September, 1888.[1] Much learning has been expended upon the discussion of the abstract question of the right of *mare clausum.* I do not conceive it to be applicable to the present case.

*Mare clausum* doctrine inapplicable.

Mr. Phelps asserts ownership in sealeries.

"Here is a valuable fishery, and a large and, if properly managed, permanent industry, the property of the nation on whose shores it is carried on. It is proposed by the colony of a foreign nation, in defiance of the joint remonstrance of all the countries interested, to destroy this business by the indiscriminate slaughter and extermination of the animals in question in the open neighboring sea, during the period of gestation, when the common dictates of humanity ought to protect them, were there no interests at all involved. And it is suggested that we are prevented from protecting ourselves against such depredations because the sea, at a certain distance from the coast, is free.

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[1] Appendix to Case of United States, Vol. I, p. 287.

"The same line of argument would take under its protection piracy and the slave trade, when prosecuted in the open sea, or would justify one nation in destroying the commerce of another by placing dangerous obstructions and derelicts in the open sea near its coasts. There are many things that can not be allowed to be done on the open sea with impunity, and against which every sea is *mare clausum*. And the right of self-defense as to person and property prevails there as fully as elsewhere. If the fish upon Canadian coasts could be destroyed by scattering poison in the open sea adjacent, with some small profit to those engaged in it, would Canada, upon the just principles of international law, be held defenseless in such a case? Yet that process would be no more destructive, inhuman, and wanton than this.

All acts not justifiable because committed on high seas.

"If precedents are wanting for a defense so necessary and so proper, it is because precedents for such a course of conduct are likewise unknown. The best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules."

Growth of international law.

The views thus expressed by Mr. Phelps were declared by Mr. Blaine, in his note, to be the views adopted by the Government of the United States.

The United States adopt Mr. Phelps's views.

Lord Salisbury in error.

On the 14th of April, 1891, Mr. Blaine wrote to Sir Julian Pauncefote: "In the opinion of the President, Lord Salisbury is wholly and strangely in error in making the following statement: 'Nor do they (the advisers of the President) rely, as a justification for the seizure of British ships in the open sea, upon the contention that the interests of the seal fisheries give to the United States Government any right for that purpose which, according to international law, it would not otherwise possess.'

Rights arising out of ownership of Islands and habits of seals.

"The Government of the United States has steadily held just the reverse of the position which Lord Salisbury has imputed to it. It holds that the ownership of the islands upon which seals breed; that the habit of the seals in regularly resorting thither and rearing their young thereon; that their going out in search of food and regularly returning thereto, and all the facts and incidents of their relation to the islands, give to the United States a property interest therein; that this property interest was claimed and exercised by Russia during the whole period of its sovereignty over the land and waters of Alaska; that England recognized this property interest so far as recognition is implied by abstaining from all interference with it during the whole period of Russia's ownership of Alaska and during the first nineteen years of the sovereignty of the United States. It is yet to be determined whether the lawless intrusion of Canadian vessels in 1886 and subsequent years has changed the law and equity of the case theretofore prevailing."

Rights arising out of ownership of Islands and habits of seals.

The correspondence also shows that the habits of the seals, all the details as to their life on the Pribilof Islands, the character of their annual migration, and all the facts necessary to support the claims of protection and of property set up by the United States, have been the subject of careful investigation and discussion between the two Governments.[1]

All facts relating to property claim fully discussed.

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[1] Appendix to British Case, Vol. III, Part 1, pp. 424–453, and House Ex. Doc., No. 450, 51st Cong., 1st sess., pp. 15–51. At pp. 45 of Vol. III and 48 of the Ex. Doc. aforesaid, Dr. Dawson, one of the British Bering Sea Commissioners, under date of March 5, 1890, discusses fully the facts upon which the property claim is based.

See also Debates House of Commons, Dominion of Canada, 1888, Vol. XXVI, p. 976. In a speech made April 25, 1888, Mr. Baker, M.P., quoted the following from the tenth census (1880) of the United States: "The fur seals of Alaska collectively and individually are the property of the general Government. * * * Every fur seal playing in the waters of Bering Sea around about the Pribilof Islands, no matter if found so doing 100 miles away from the rookeries, belongs there, has been begotten and born therein, and is the animal that the explicit shield of the law protects; no legal scepticism or quibble can cloud the whole truth of any statement (*sic*)." Commenting on the foregoing, Mr. Baker says: "It would appear that the United States revenue cutters are going on some absurd contention of this kind in their seizure of British vessels in the Behring Sea."

Claim of protection and ownership not new.

The foregoing completely disproves the statement at page 135 of the British Case that the claim of protection and of ownership by the United States in the fur-seals is new; and also the statement at page 140 relating to the "absence of any indication as to the grounds upon which the United States base so unprecedented a claim."

Case of the *Harriet*.

The British Case refers at page 136 to the case of the American schooner *Harriet* for the purpose of showing that the United States have denied to other nations a right of protection and property in seals when on the high seas. A careful examination, however, of the facts will readily show that they fail to bear in any way upon the point to prove which they were cited.

In 1831 one Vernet, who had been appointed by the Republic of Buenos Ayres governor of the Malvinas (Falkland) Islands, seized the *Harriet*, charged with the taking of seals on those islands. The American Chargé at Buenos Ayres protested against the seizure, and a lengthy correspondence ensued, all the material parts of which are given in the Appendix hereto.[1] From this correspondence it is apparent:

First. That it was not the intention of either Government to raise any question as to the juris-

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[1] *Post*, p. 184–191.

Case of the *Harriet.*

diction over the high seas, or as to the rights of protection or property in seals when found on the high seas. Seals were never taken at the Falkland Islands otherwise than on land, and the *Harriet* was not charged with the offense of taking them on the high seas.

Second. The real question in the dispute was whether the Republic of Buenos Ayres owned the coasts upon which sealing had been indulged in by the captured schooner, and upon this point issue was actually joined by the two Governments. The position assumed by the American Chargé was that the Falkland Islands were unoccupied and under the sovereignty of no nation, and that, therefore, sealing on them was open to all.

Third. It is true, the American Chargé asserts that "the ocean fishery is a natural right," and that "every interference with it by a foreign power is a natural wrong;" and these assertions appear to be relied on at page 137 of the British Case to defeat the claims of protection and property now put forward by the United States. The context[1] shows, however, that, so far as sealing is concerned, the Chargé was merely laying a foundation for the proposition that, granting the title of Buenos Ayres to the coast in question to be

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[1] *Post*, p. 190.

Case of the *Harriet.*

perfect, yet it was bare and uninhabited, and, therefore, justice required that "the shores, as well as the body of the ocean, ought to be left common to all;" which proposition, if established, would have justified the act of the *Harriet.* The accuracy of this proposition the United States are not now called upon to discuss, since it has no bearing upon the present issues.

In dismissing the case of the *Harriet* the United States again insist that it is wholly irrelevant to the present controversy, for the reason that no occasion had arisen for the assertion of any right to protect seals when away from land, and no such right was, in fact, either asserted or denied by either party.

# PART SECOND.

## REPLY OF THE UNITED STATES TO THAT PORTION OF THE CASE OF GREAT BRITAIN CONTAINED IN THE REPORT OF THE BRITISH COMMISSIONERS.

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## REPLY OF THE UNITED STATES TO THAT PORTION OF THE CASE OF GREAT BRITAIN CONTAINED IN THE REPORT OF THE BRITISH COMMISSIONERS.

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### THE BRITISH COMMISSIONERS AND THEIR REPORT.

The Report, bearing date June 21, 1892, of the Commissioners of Great Britain, which is herein treated as the second part of the British Case, was delivered to the Agent of the United States and to the Arbitrators in pursuance of an agreement reached by a diplomatic correspondence between the two Governments, already cited (*ante*, p. 2), but not until the 25th of October, 1892, and after the lapse of seven weeks from the delivery of the original British Case.

The Bering Sea Commission.

The character of the Report will be discussed somewhat in detail in the following pages, and it is considered to be proper that some observations should be made at the outset as to the composition of the Commission. In 1891, when the subject of a *Modus Vivendi*, as preliminary to the contemplated Treaty, was under discussion, The Bering Sea Commission.

it was proposed in the course of the correspondence that a "Joint Commission" be appointed to investigate the facts in relation to seal life, with a view of obtaining beforehand information which might be useful to the contemplated Tribunal of Arbitration in the discussion of measures for its protection and preservation, should that subject be submitted to the Tribunal;[1] and, while the formal constitution of the Commission was reserved as a subject to be disposed of in the contemplated Treaty, it was deemed expedient that, in the meantime, two agents should be designated on the part of each Government, immediately after the signature of the *Modus Vivendi*, to begin such an investigation.

The *Modus Vivendi* was signed on the 15th of June, 1891, and as early as the 3d of July of the same year the Acting Secretary of State proposed to Her Majesty's Minister in Washington "that arrangements be made to have these agents of the respective Governments go together, so that they may make their observations conjointly." On July 6, 1891, the Minister answered that, having communicated this proposal to Lord Salisbury, his lordship replied "that a ship had already been chartered to take the British Commissioners to the seal islands,"

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[1] Appendix to Case of the United States, Vol. I, pp. 305, 311, 312.

The Bering Sea Commission.

but that they would be instructed "to coöperate as much as possible" with the United States Commissioners.[1] It appears from the Report of the British Commissioners that the only intercourse had by them with the Commissioners of the United States was during "several days" on the Pribilof Islands (Sec. 12), while "the cruize in the North Pacific occupied nearly three months" (Sec. 20).

The British Commissioners.

The manner in which the British Commissioners conducted their investigations and the spirit which actuated them may in part be inferred from the account which one of them, then a member of the British Parliament, gave publicly to his constituents after his return to England.[2] The agreement for the constitution of the Joint Commission was actually made and signed on December 18, 1891, before the Treaty was executed, and Secretary Blaine, on being advised, February 6, 1892, by Her Majesty's Minister of the names of the British Commissioners, and that they had arrived in Washington and were ready to enter into conference with the Commissioners of the United States, felt it necessary to address the Minister a note, expressing regret that the British Government had selected persons who seemed

Secretary Blaine's note to Sir J. Pauncefote.

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[1] Appendix to Case of the United States, Vol. I, p. 322.

[2] *Post*, p. 418.

Secretary Blaine's note to Sir J. Pauncefote.

Meetings of the Joint Commission.

"disqualified for an impartial investigation and determination of the questions to be submitted to them."[1] The Commissioners of the two Governments, after conferences during the period from February 8 to March 4, 1892, adjourned, and the Report now under consideration is the one subsequently prepared by the British Commissioners and which has been delivered to the United States and the Arbitrators as a part of the British Case.

Report of British Commissioners.

The bulk of the matter contained in this Report relates to points considered with considerable fullness in the Case of the United States, and may so far be regarded as presenting questions to be dealt with by the printed and oral arguments provided for by the Treaty; but it also embraces matters of allegation, in support of the positions taken upon the part of Great Britain, which have not been dealt with by anticipation in the Case of the United States; and also matters of evidence, bearing upon points dealt with in that Case, the truth or sufficiency of which are denied by the United States.

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[1] Appendix to Case of United States, Vol. I, p. 348; and Dr. Dawson's paper, Appendix to British Case, Vol. 3, United States No. 2 (1890), p. 450.

Report of British Commissioners.

These subjects and also the schemes of regulations proposed in the Report[1] constitute matter which should be dealt with in this Counter Case. It will be treated of under appropriate heads.

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[1] NOTE.—The term "Report" as used herein refers to the Report of the Bering Sea Commissioners, unless otherwise specified; and the term "Case" refers in the same manner to the Case of the United States. All references in the text of this portion of the Counter Case to sections or pages refer to sections or pages of the Report of the British Bering Sea Commissioners, unless otherwise specifically stated.

## FIRST.

### MATTERS IN RELATION TO WHICH THE REPORT AND THE CASE OF THE UNITED STATES MATERIALLY CONFLICT, AND CONCERNING WHICH PROPOSITIONS OR FACTS ARE ALLEGED IN THE REPORT WHICH HAVE NOT BEEN CONSIDERED IN THE CASE OF THE UNITED STATES.

### HABITS OF THE FUR-SEALS.

#### 1. *Distribution of seals in Bering Sea and the suggested intermingling of the Pribilof and Commander seal herds.*

Intermingling of the Alaskan and Russian herds.

The British Commissioners, in considering the intermingling of the two herds, after stating the fact that the Pribilof herd enters and leaves Bering Sea by the eastern passes of the Aleutian Islands and referring to certain statements made in the Report as to migration, continue: "These circumstances, with others which it is not necessary to detail here, are sufficient to demonstrate that the main migration routes of the seals frequenting the Commander Islands do not touch the Aleutian chain, and there is every reason to believe that, although the seals become more or less commingled in Bering Sea during the summer, the migration routes of the two sides of the North Pacific are essentially distinct." (Sec. 198.)

Intermingling of the Alaskan and Russian herds.

Again, in considering this question, after making practically the same statement, that the migration routes are distinct, the Commissioners add "* * * it is believed that, while to a certain extent transfers of individual seals or of small groups occur probably every year between the Pribiloff and Commander tribes, that is exceptional rather than normal" (Sec. 453). In spite, however, of these admissions that all intermingling of the two herds is abnormal and infrequent, they still assert that such interchange takes place (Sec. 170). In support of such an assertion two charts are presented in the Report (Nos. III and IV, facing p. 150) purporting to give the distribution of seals in Bering Sea during two periods, namely, July 15 to August 15 and August 15 to September 15 (Sec. 213). The chart also, which purports to show the resorts and migration routes of fur-seals in the North Pacific (No. II, facing p. 150), assumes a similar distribution.

Charts Nos. III and IV of the Report.

Chart No. II of the Report.

Data from which the charts were compiled.

The data, from which these charts as to the distribution of seals in Bering Sea were constructed, are stated in the Report to be the sealing logs kept by the American and British cruisers in Bering Sea during the season of 1891 and "information on the same subject * * * sought in various other ways, such as by inquiry

Data from which the charts were compiled.

from the captains and hands of sealing vessels met in Victoria and Vancouver and from the inhabitants of various places touched at during the summer" (Sec. 210). The United States deny that the data collected by the American and British cruisers warranted such construction of the charts Nos. III and IV or of that part of chart No. II which purports to give the summer resort of the two great seal herds. And the United States claim that the "information" obtained "in various other ways" should have no influence upon the Tribunal, inasmuch as the evidence or statements thus relied upon are not presented and the Commissioners have even failed to give the names of their informants.

Insufficiency of data.

Principal data relied upon.

It is evident, from the particular manner in which the Report describes the way in which the data collected by the war ships of the two nations were taken (Secs. 210, 212, 213), that such data were their principal source of information; but it is contended that the observations of seals, reported by the vessels, do not sustain the assumed density and distribution of seal life in Bering Sea which is made to appear by the charts above referred to. In support of these denials the United States produce the copies of the data relied upon, compiled from the seal logs of the British cruisers by the British Commis

Principal data relied upon.

sioners, and by their courtesy furnished to this Government, and the data compiled from the seal logs of the American vessels.[1] The attention of the Arbitrators is particularly directed to the area of sea between the Pribilof and Commander Islands, the extent covered by the cruises in that section, and the number of seals there observed.

Chart of cruises in Bering Sea in 1892.

The United States also present in support of their contention on this question a chart showing the cruises of American vessels in Bering Sea during the summer of 1892, which vessels made particular observations as to the density and locality of seals in Bering Sea.[2] This chart is compiled by the Navy Department of the United States from the logs of the American Bering Sea squadron on file in that Department, and it demonstrates how completely the sea areas about the Pribilof Islands were covered by the observations of 1892.

Sealing chart, 1892.

The United States also present in support of their position on this question a chart, compiled from the seal logs of said vessels, kept in the same manner as those of 1891 by each vessel of the squadron, which chart shows the num-

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[1] Charts of cruises and seals seen, 1891, Nos. 1 and 2. Portfolio of maps and charts appended to Counter Case of the United States.

[2] Chart of cruises, 1892. Portfolio of maps and charts appended to Counter Case of the United States.

Sealing chart, 1892.

ber of seals seen, the locality where observed, and the date of the observations.[1] A comparison of this chart with the sealing chart submitted with the Case of the United States,[2] the charts giving the data from which the British Commissioners drew their inferences,[3] and the chart showing the cruises of the American squadron in 1892,[4] demonstrates conclusively the lack of evidence to sustain the Commissioners' assertion, and shows that the assumed distribution of seals in Bering Sea, exhibited by charts Nos. II, III, and IV of the Report, is unwarranted and misleading.[5] It may also be noted that the Commissioners in chart II make it appear that the Commander and Robben Island seals intermingle; this is, however, specifically denied by Mr. Grebnitzki, the Russian official so often quoted in the Report.[6]

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[1] Seal Chart, 1892. Portfolio of maps and charts appended to Counter Case of United States.

[2] Sealing chart. Portfolio of maps and charts appended to Case of the United States. No. 4.

[3] Charts of cruises and seals seen 1891, Nos. 1 and 2. Portfolio of maps and charts appended to Counter Case of the United States.

[4] Chart of cruises, 1892. Portfolio of maps and charts appended to Counter Case of United States.

[5] See also Capt. Hooper's investigations in 1892 as to range of Pribilof seal herd in Bering Sea. Report September 6, 1892, *post* p. 216.

[6] *Post* p. 363. Mr. Grebnitzki, the Russian military chief on the Commander Islands, is so often cited by the British Commissioners that the attention of the Arbitrators is particularly directed to his statements, hereto appended, *post* pp. 362–367.

### *The alleged promiscuous nursing of pups by female seals.*

Promiscuous nursing denied.

The United States deny that the statements made in the Report, in support of the assertion that a cow will nurse pups other than her own, are based on evidence sufficient to establish the facts alleged.

Elliott and Bryant as authorities in the Report.

The two most prominent authorities relied on in the Report are Mr. Henry W. Elliott and Capt. Charles Bryant, the former being quoted over fifty times in the first one hundred and forty-five pages, and the latter forty times in the same space. Yet the opinions of these two observers are to the contrary on this point; and, while their opinions are taken without reservation on all points favorable to the conclusions of the Commissioners, they are, in respect to this question, characterized as a "theory" (Secs. 320, 322, 323) and "not proven" (Sec. 321).[1]

Cow's affection for her young.

The Report attempts to disparage Mr. Elliott's opinion by quoting him to the effect that the female seems to possess no natural affection for her offspring (Sec. 322), but fails to state that Sir F. McCoy, F. R. S., also quoted in this connection (Sec. 324), publishes, in his article referred to in the Report, a letter from an in-

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[1] See also N. A. Grebnitzki, *post* p. 366; Dampier's statement, Report, Sec. 848.

Cow's affection for her young.

formant, on whom he relies for his knowledge of seal habits, in which the following statement is made: "They [the cows] keep good watch and care affectionately for their offspring. * * * I have seen three pups washed off the rocks and the cows have immediately followed and brought them on the rocks again in an astonishingly rapid manner."[1] The attention of the Arbitrators is also called to the testimony presented on this point in the Appendix herewith submitted.[2]

Analogy with other animals.

The Report admits that "analogy with most other animals appears to favor this view" (Sec. 317), and that it "may hold in the case of the fur-seal" (Sec. 318), but insists that the observers have been misled by this analogy (Sec. 317) and by the circumstance that they have seen a cow refuse to take the first pup she meets and select another to be nursed (Sec. 323), adding that such selection may be the mere act of finding a pup which does not have the smell of fresh milk about it (Sec 323). And it is further suggested that this selection may be made "perhaps by sound" (Sec. 323).

Authorities relied upon in the Report.

Two authorities are particularly quoted in support of the position taken in the Report: "Sir Samuel Wilson, M. P., the

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[1] Prodromus of the Zoölogy of Victoria, by Sir F. McCoy, F. R. S., decade VIII, p. 9.

[2] J. Stanley-Brown, p. 388; W. H. Williams, p. 398; C. H. Townsend, p. 393.

Authorities relied upon in the Report.

eminent Australian sheep-breeder," who says, "it is common and easy to make ewes suckle other ewes' lambs," and then demonstrates how difficult it is to do so (Sec. 325); and Mr. C. H. Jackson, Government Agent in charge of the Seal and Guano Islands of Cape Colony, who asserts that "a cow will suckle any of the young seal, whether her own or not" (Sec. 324).

Mr. C. H. Jackson a questionable authority.

As to the statements of Sir Samuel Wilson, they are sufficiently in accord with the position taken in the Case of the United States on this question to demand no criticism here. Mr. Jackson, on the other hand, makes a direct assertion on the subject which is opposed to the evidence contained in the Case of the United States and to the principal authorities of the British Commissioners. An examination of the report of this gentleman (pp. 154, 155) fails to reveal upon what knowledge he bases such a statement; and there is no proof that he has ever seen the seal islands of Cape Colony or even been informed by experienced individuals respecting the habits of the fur-seals found there. Under such circumstances the United States insist that his statement is unworthy of consideration as evidence.

Sir F. McCoy as an authority.

The Report also alleges that "the same statement [as Mr. Jackson's] is made with respect to the fur-seal of the Australian coast" (Sec. 324), Sir F. McCoy as an authority.

referring in a footnote to the work of Sir F. McCoy, already mentioned herein.[1] The following is the statement as it appears in the article referred to and is an extract from the letter of Mounted Constable Ardill, incorporated in full in said article and republished in the Appendix to this Counter Case:[2] "Should a cow die or be killed, her pup is suckled by the other cows. This I am told is the case, but I can't vouch for it." This last noted authority, which appears in the Report as Sir F. McCoy, proves to be a mounted constable, who makes the statement on a report so untrustworthy that he will not even vouch for its truth.

The United States, therefore, claim that the Commissioners have failed to advance a single authority whose opinion is of value to support their contention that a cow will suckle any pup except her own, and that the contrary position taken by the United States and sustained by ample evidence[3] stands uncontroverted.

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[1] *Ante*, p. 53.

[2] *Post* p. 292.

[3] N. A. Grebnitski, *post* p. 366, and testimony submitted with the Case of the United States, Appendix, Vol. II, pp. 62, 104, 117, 375, etc.

### 3. *Period at which the female seals go into the water.*

Position taken by the Report and the authorities.

The Report, without definitely stating that the female seals do not seek the water for from four to six weeks after the birth of their young, practically adopts the opinion of "Snegiloff" [Sniegeroff], the native foreman on the Russian Islands, as well as the statement once made by Capt. Bryant on this subject, and supports these opinions by reference to the Commissioner's own observations as to the relative number of cows and pups on the rookeries at different times in the season of 1891 (Sec. 306). The "very general belief among natives on the Pribilof and Commander Islands to the effect that the females do not leave the land to feed while engaged in suckling their young" (Sec. 307) can not be accepted as evidence in the absence of names of persons holding such belief; and the fact that two females killed in September in the presence of the Commissioners had no food in their stomachs (Sec. 307) may be dismissed without consideration, as at the time when these cows were killed the Commissioners admit that the majority of the cows were feeding (Sec. 306); and the number killed is too small to establish the assertion advanced in the Report.

The information also given by Her Majesty's Minister at Tokio—that "It is sometimes stated

Position taken by the Report and the authorities.

that the breeding cows are in the habit of leaving the rookeries to fish for the support of their young, but the experienced authority on whose remarks these notes are founded is not of this opinion. He has never found food inside the female fur-seal taken on the breeding grounds." (Sec. 307)—must be rejected for the reason that the statement is based on no actual knowledge.

Capt. Bryant's statements.

The reference, given in connection with Capt. Bryant's opinion, is to his report, made when he was special Treasury agent in November, 1869, and which is published in the Appendix herewith submitted, so far as the same relates to the Pribilof Islands.[1] The statement referred to in the Report is as follows: "The females go into the water to feed when the pups are some six weeks old, leaving them on the uplands."[2] In another portion of his report Capt. Bryant says: "About the middle of June the males have all arrived and the ground is fully occupied by them. Soon after this the females begin to come, in small numbers at first, increasing as the season grows late, until the middle of July."[3] At another place he states: "About the middle of July the females go from the rookeries into the water."[2] It is, therefore,

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[1] *Post* p. 275.

[2] *Post* p. 278.

[3] *Post* p. 276.

Capt. Bryant's statements.

evident that the period could not have been six weeks according to his own statements in 1869. Ten years later, after eight years of experience on the Pribilof Islands, he states: "The females after giving birth to their young, temporarily repair to the water, and are thus never on shore all at once."[1]

He carefully omits to give any definite period between the birth of the pup and the excursions of the cow for food. This omission is of importance in this connection, as he prefaces his statement at this time with the following note to Dr. Allen: "You will understand that where any of my former statements are omitted or changed, it is due to correction made necessary by my longer experience."[2] It is evident, therefore, that Capt. Bryant had publicly discarded the opinion used by the Commissioners to maintain their position. One native of the Commander Islands is, therefore, the sole authority for the statement of the British Commissioners.

The one authority for the Report's position.

Testimony of C. H. Townsend.

The United States deny the sufficiency of this evidence and offer the testimony of Mr. C. H. Townsend, of the United States Fish Commission, to sustain such denial and to prove to what extent

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[1] Monograph of North American Pinnipeds, p. 386.

[2] Monograph of North American Pinnipeds, p. 382.

Testimony of C. H. Townsend.

the nursing females had already extended their food excursions even in the last days of July.[1] The same witness states that on the 27th of July, 1892, large numbers of the females were away from the rookeries on St. Paul Island, and that four-fifths of the seals on the breeding grounds were pups.[1] It may be noticed in this connection that this was the same date at which the British Commissioners arrived on the Islands in 1891 (Sec. 759), when they state that "the rookeries were still at their fullest" (Sec. 3). Mr. Stanley-Brown, whose special study of seal life on the Islands in 1891 and 1892 has made his opinions of the utmost value, states that the females leave the rookeries within fourteen or seventeen days after the birth of their pups, and he shows by what observations he became convinced of the fact.[2]

Testimony of J. Stanley-Brown.

### 4. *Aquatic coition.*

Affirmation of its possibility by the Report.

The Report states that "most writers," for certain reasons, have advanced "an erroneous statement" that the place where fecundation of the female seal occurs is on the land (Sec. 295). The Commissioners affirm, on the contrary, that it is not only possible for seals to copulate in the

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[1] *Post* p. 393.

[2] *Post* p. 386.

Affirmation of its possibility by the Report.

water,[1] but that such act is of great frequency when the males are insufficient in number on the rookeries (Sec. 297). This allegation as to the possibility of pelagic coition is stated in the Report to be established by "ample proof" (Sec. 246).

The evidence in favour of aquatic coition.

An examination of this "ample proof" shows that it consists of the following: The opinion of Capt. Bryant, contained in his report to the Treasury Department in 1869 (which, as has been shown, is entirely superseded by his paper in the "Monograph of North American Pinnipeds"), and two statements made by him in the latter work (Sec. 295), the references being to pages 385 and 405 (footnote, p. 52), both of which clearly allege the possibility of coition in the water. Besides these statements of Capt. Bryant, the Report quotes Mr. W. H. Dall, who made a statement to Prof. Allen that the female seal receives the male in the water (Sec. 296, p. 53). The remainder of the "ample proof" consists of "special inquiries" made by the Commissioners, which "have fully confirmed Bryant's original statements, the evidence obtained including that of four or five gentlemen who have had long experience with the Pribilof and Com-

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[1] Mr. Grebnitzki, an authority recognized by the Report, declares that he believes copulation in the water to be impossible, *Post* p. 364.

The evidence in favour of aquatic coition.

mander Islands, and several intelligent and observant hunters who have been engaged in sealing at sea" (Sec. 296). The latter generalization of information, in which neither the names of the "four or five gentlemen" nor those of "the intelligent and observant hunters" are given, can not be considered in the light of proof to substantiate the position of the Report on this question.

It is a significant fact in connection with the proofs advanced by the Commissioners that, notwithstanding the observations made by these officials on and about the Pribilof and Commander Islands, they fail to have seen, or at least to record, a single instance in which the act of coition took place in the water, although it would seem that instances must have been frequent in the waters about their vessel, if their statements as to the scarcity of the adult males on the Islands are to be accepted.

Capt. Bryant as an authority.

As to the opinion of Capt. Bryant, relied upon by the Commissioners, the attention of the Arbitrators is directed to his deposition submitted with the case of the United States.[1] The other authority cited in the Report, namely, Mr. W. H. Dall, gives the following testimony in relation to pelagic coition, after saying that his statements

W. H. Dall as an authority.

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[1] Appendix to Case of the United States, Vol. II, p. 6.

"as to copulation in the water rest largely upon assumption," and after reciting his observations as to seals seen playing in the water: "I have never had an opportunity to assure myself that the pairs of seals seen playing in the water were of opposite sexes, or, if they were, that their play was of a sexual nature, or, if it was, that the act was complete or effective."[1]

**W. H. Dall as an authority.**

In view of the facts stated and of the quantity of testimony on this point published with their Case,[2] the United States submit that there is no proof, "ample" or otherwise, to support the assertion that coition takes place in the water. (Sec. 246, p. 43.)

**Insufficiency of the evidence advanced in the Report.**

The United States further claim that the position taken in the Report on the question of when the female seals leave the rookeries after the birth of their young (*ante*, p. 57) is entirely inconsistent with the proposition maintained by the Commissioners "that the time of impregnation of the female is not necessarily comprised within the period during which she seeks the shore for the purpose of giving birth to her young" (Sec. 297), and the statement made in the Report that the breeding females remain for several weeks on shore after bearing their young (Sec. 30). As the period of

**Inconsistencies of the Report.**

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[1] *Post* p. 359.

[2] Appendix to Case of the United States, Vol. II, pp. 14, 42, 165, etc.

Inconsistencies of the report.

gestation is stated by the Commissioners to be about twelve months (Sec. 434), coition in the water would necessarily be four or even six weeks (Sec. 306) later than the arrival of cows at the Islands, which would necessitate the arrival of the cows by as many weeks later the following year, since they give birth to their young immediately upon landing (Sec. 30).

Late arrival of the cows at the Islands.

If the frequency of pelagic coition be as great as alleged in the Report, the date of the arrival of the cows would be growing continually later and would be now much later than in former years. No proof is offered in the Report on this important point. In opposition thereto the United States Commissioners have appended to their report a table showing the arrival of the various classes of seals on the Islands,[1] and the United States herewith submit on the same question the further evidence of Maj. W. H. Williams, Special Treasury Agent in charge of the Pribilof Islands, who states that 95 per cent of the cows had given birth to their young by July 12, 1891, showing the arrivals must have been at the usual time,[2] and of Mr. Stanley-Brown, who arrived on the Islands on the 9th of June, 1892, and who states that some cows had arrived previous to that date.[3]

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[1] Case of the United States, p. 386.

[2] *Post* p. 397.

[3] *Post* p. 386.

## MANAGEMENT OF THE PRIBILOF ISLANDS AS THE ALLEGED CAUSE OF THE DECREASE OF THE ALASKAN SEAL HERD.

The methods admitted to be almost perfect.

The British Commissioners at several places in their Report admit that the regulations in force and the methods employed in taking seals on the Pribilof Islands are the best that could have been adopted, having been founded on the long experience of the Russian Government after nearly a century of occupation (see Secs. 659, 676). The Report further states that "from a transcendental point of view the methods proposed were appropriate, and even perfect, but in practical execution, and as judged by the results of a series of years, they proved to be faulty and injurious" (Sec. 662). It is, therefore, not the methods, but the manner of their execution, which is the subject of criticism by the Commissioners.

Excessive killing alleged.

Other than this general charge of faulty execution, the one variation from the Russian methods made by the United States which is disapproved of in the Report is the number of seals allowed to be taken (Sec. 659).

Proof must be limited to period 1870–1880.

In establishing their assertion that the number of seals annually killed on the Islands was excessive, it is insisted by the United States that the Commissioners should be confined to the first decade of the lease of the Pribilof Islands to the Alaska Commercial Company (1871–1880), be-

Proof must be limited to period 1870–1880.

cause pelagic sealing was then too insignificant to perceptibly affect seal life, and that any consideration of the management subsequent to the introduction of pelagic sealing, which is admitted to be a factor "tending towards decrease" (Sec. 60), is irrelevant to the question at issue, unless it can be shown that there was a sufficient increase in the number of seals killed on the Islands, or sufficient changes in the methods employed in taking the quota, to materially affect and deplete the seal herd, even without the introduction of pelagic sealing.

Admission as to period after decided decrease.

The United States admit that, after a decided decrease in the birth rate of the seal herd had been caused by pelagic sealing, the number allowed by the lease to be killed was more than the reduced herd could properly endure; but they assert that any evil effects resulting from the management on the Islands is directly chargeable to the conditions established by pelagic sealing.

It was not until the year 1889 that the decrease in the birth rate of the seal herd (which decrease had been augmented annually by an ever increasing fleet of pelagic sealers) became sufficiently evident among the young male portion of the herd to seriously attract the notice of and to alarm the Government agents on the Islands.[1]

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[1] Case of the United States, p. 184.

Admission as to period after decided decrease.

In that year for the first time the weight of skins fell below the average of former years.[1] The report of the official in charge of the Islands resulted in an immediate reduction of the quota allowed by the Treasury Department at Washington, and in a curtailment of the time allowed within which to take such quota.[2] Notwithstanding the endeavors of the United States to meet the new conditions created by pelagic sealing with restrictions upon slaughter, which were made still more rigid in 1891, the herd continued to become more and more depleted, and in 1892 a decrease appears over 1891, though the consensus of opinion of those on the Islands is that in the last year the male seals have increased to a limited extent.[3]

Irrelevancy of such admission.

The United States, however, insist that the failure, if any, to take into account the "new factor" (viz, pelagic sealing) is wholly irrelevant to the true issue, and they have presented testimony in relation to the management on the Islands for the purpose of showing, and which shows, that such management could not, under normal conditions, have caused a decrease in the Pribilof seal herd.

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[1] Max Heilbronner, *post* p. 369 and table facing.

[2] Case of the United States, p. 153.

[3] J. Stanley-Brown, *post* p. 385.

Failure of Report to show change of management after 1880.

The Report fails to establish a single instance where the management on the Islands or the methods employed thereon have been changed since 1880 from the "appropriate and even perfect" system adopted in 1870, or where the number of seals killed annually has been increased beyond the annual quota of the first ten years of the lease.

Reservation as to charges of fraud.

The Government of the United States reserves to another portion of this Counter Case the repeated and, as it conceives, very unjustifiable insinuations of the Commissioners of the malfeasance by United States officers, of fraudulent practices of the Alaska Commercial Company when lessees, and of collusion, necessarily implied, by the London firm of C. M. Lampson & Company; only stating here, that all such evident attempts to mislead the Tribunal of Arbitration and to obscure the true issue are unfounded in fact and unsupported by proof or evidence of any sort.

All reference, therefore, to the management of the Pribilof Islands subsequent to the introduction of pelagic sealing, when it became a factor in the decrease of the seal herd, the United States repeat, is irrelevant to the true issue—the cause of the present depleted condition of the Pribilof rookeries.

Foundation of charge of excessive killing.

The alleged excessive killing of male seals must rest entirely on the proposition, which the Report endeavors to establish, that, by means of this license to slaughter 100,000 young males on the Islands, the breeding males have become so depleted as to be unable to fertilize the females, thus creating a decrease in the birth rate sufficient to account for the present condition of the Alaskan seal herd. To establish this, the Commissioners refer, among other things, to the report to the Treasury Department in 1875 of Captain Charles Bryant. This official did, as stated in the Report (Sec. 678), advise the Secretary of the Treasury, in view of his observations, to reduce the number of the quota to 85,000 skins; but the true reason of this recommendation is obscured in the Report by a collection of quotations from various writings, of which he is the author, and by placing an erroneous interpretation on his language.

Captain Bryant as a witness for the Commissioners.

Reasons for his report.

The reasons for his report of 1875 are clearly shown by an examination of his testimony before a committee of the House of Representatives in 1876. Captain Bryant there makes the following statement: "In the season of 1868, before the prohibitory law was passed and enforced, numerous parties sealed on the Islands at will and took about two hundred and fifty thousand seals.

Reasons for his report.

They killed mostly all the product of 1866–'67. In making our calculations for breeding seals we did not take that loss into consideration, so that in 1872–'73, when the crop of 1866–'67 would have matured, we were a little short. These seals had been killed. For that reason, to render the matter doubly sure, I recommended to the Secretary a diminution of 15,000 seals for the ten years ensuing. I do not, however, wish to be understood as saying that the seals are all decreasing—that the proportionate number of male seals of the proper age to take is decreasing.

"Q. The females are increasing?

"A. Yes, sir; and consequently the number of pups produced annually."[1]

In 1872 the seals taken were principally four and six years old and some of seven years old were killed (Sec. 812). This was drawing from the same class of seals killed in 1868,[2] which would, had they been spared, have appeared on the rookeries as breeders in 1873 and the years thereafter.

The following year (1873) the class of skins preferred were "three-year-olds" (Sec. 813), or those born in 1870; the so-called "crops" of 1869 and 1870 would not have been fit to go on

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[1] Ho. Rep., 44th Cong., 1st Sess., Rept. No. 623, p. 99.

[2] Appendix to Case of the United States, Vol. II, p. 7.

Reasons for his report.

the breeding grounds till 1875 or 1876, which would correspond with Captain Bryant's statement that the decrease in male life ceased in 1876 and breeding male seals began to increase to such an extent in 1877 that he affirmed that in two years (1879) the loss would be made good (Sec. 679). This is further and fully explained by the same witness in his deposition appended to the Case of the United States.[1]

Divisions of evidence.

The evidence presented in the Report, which treats of the period from 1870 to 1880, consists (1) of statements to the effect that 100,000 or more skins could not be taken on the Islands without depleting the herd, and (2) of other statements or conclusions to the effect that the male seals, both breeding and nonbreeding, had decreased during the first decade of the lease of 1870.

Irrelevancy of the first division.

As to the first statements mentioned, it is insisted by the United States that it is entirely irrelevant how many seals were taken on the Islands annually, unless it can be shown that the number killed resulted in a diminution of the normal number of the seal herd, or at least the male portion of it. The so-called proof, however, on this point which the Report presents as to the Russian period of occupation is so mani-

Unfairness of statements as to Russian period.

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[1] Appendix to the Case of the United States, Vol. II, p. 7.

Unfairness as to statements as to Russian period.

festly unfair that attention should be directed to its misleading character. The Commissioners state that from 1787 to 1806 the number of skins taken was 50,000 annually; from 1807 to 1816, 47,500; and from 1817 to 1866, 25,000. The desire is to suggest the inference that the killing of 50,000 was excessive, the Report giving as a secondary reason for the evident decrease the "nearly promiscuous slaughter (for the first part of this period) of seals of both sexes and all ages." (Sec. 40.)

The United States contend that the "nearly promiscuous slaughter," mentioned as a secondary cause, was the principal cause, and that the expression "for the first part of this period" is intentionally indefinite, though it appears from the Report that the killing of females was not prohibited until 1847 (Sec. 37, p. 8). The Report states that in 1836 an exceptionally severe winter caused a great mortality among the seals, so that only 4,100 of all classes were observed on the rookeries (Sec. 800), which reduced the birth rate for a number of years and necessarily, also, the annual number of skins secured. The inclusion of this time of scarcity in all classes of seals in the period of 1834 to 1866 is most misleading as to the question of how many male seals can be taken when the rookeries are in their normal

The numbers killed from 1860-1865.

condition. An examination of the Russian documents herewith submitted shows that from 1860 to 1865, inclusive (when it may be assumed the rookeries had recovered from the mortality of 1836 and the slaughter of female seals prior to 1847), the annual quota ranged from 45,000 to 70,000 on St. Paul Island alone, and that the only reason why more were not taken was the plethoric condition of the Chinese, Russian, and American markets.[1]

Second division of evidence.

The other class of statements or conclusions advanced, to show that the breeding and non-breeding seals decreased during the ten years following the leasing of the Pribilof Islands in 1870, may be divided into three heads, namely, (1) an alleged increased proportion of females to breeding males, (2) an alleged recognition by the lessees of the decrease of male seals, and (3) alleged overdriving and resort to new areas to obtain the quota. The first allegation is based entirely on comparisons between the early years of the lease of 1870 and the last two or three years of the same (1889-1891). The United States insist that such comparisons are irrelevant, for, even if the breeding males were disproportionately few during the latter years, it

Comparisons of harems 1870 and 1890 irrelevant.

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[1] *Post* pp. 193-199. Bancroft's Alaska, p. 582: "In 1851, 30,000 could be killed annually at St. Paul Island alone, and in 1861 as many as 70,000, without fear of exhausting the supply."

Comparisons of harems 1870 and 1890 irrelevant.

is the result of a decreased birth rate caused by pelagic sealing. The United States, however, deny that harems have increased "from four to eight times" over their size in 1870–1874. (Sec. 54.)

The curtailment of H. W. Elliott's statement.

Mr. Henry W. Elliott, who is relied on as an authority in this matter by the Commissioners to show that the harems averaged from 5 to 20 cows in 1874 (Sec. 293), states, in the same passage from which the quotation used in the Report has been extracted, that there are "many instances where 45 or 50 females are under the charge of one male," and he closes his sentence by stating that the average given is not entirely satisfactory to himself.[1] This curtailment of Mr. Elliott's statement is in flagrant violation of the Commissioners' Letter of Instructions, in which Lord Salisbury says: "I need scarcely remind you that your investigation should be carried on with strict impartiality" (p. 2).

Harems in 1891.

The Report fails to give any testimony to show how many females constituted a harem in 1891, and makes the statement, wholly unsubstantiated by proof, that the harems have increased in size "from four to eight fold." (Sec. 54.)

Surplus of virile males.

The present surplus of virile males has been fully treated of in the Case of the United States,[2]

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[1] United States Census Report, 1880, p. 36.

[2] Case of the United States, p. 172.

Surplus of virile males.

and a photograph taken by Mr. Stanley-Brown in 1892, at the height of the breeding season, shows a number of vigorous bulls located on the breeding grounds unable to obtain consorts.[1] On July 19, 1892, Professor B. W. Evermann, of the United States Fish Commission, a well-known authority on subjects of natural history, counted the number of bulls, cows, and pups on a section of Lukannon Rookery, St. Paul Island, and the result was as follows: 13 bulls, 90 cows, and 211 pups.[2] If each cow in a harem was represented by a pup, the average number to a bull would be 15, certainly not an excessive number even according to the Report.

Size of harems in 1892.

Alleged summary of a report by H. W. Elliott in 1890.

The Commissioners also rely on a newspaper extract, which purports to be a summary of a report made by Mr. Henry W. Elliott in 1890 to the Secretary of the Treasury, to establish several alleged facts (Sec. 832). One of these statements in this alleged summary (Sec. 433) is that there were 250,000 barren females on the Pribilof Islands in 1890 (Sec. 832, p. 40). This is cited by the Commissioners to show the lack of virile males on the rookeries in that year. An examination of the extract as published in

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[1] J. Stanley-Brown, *post* p. 386.

[2] B. W. Evermann, *post* p. 264.

Alleged summary of a report by H. W. Elliott in 1890.

volume III of the Appendix to the Case of Great Britain (Parliamentary Paper C—6368, No. 2, 1891, p. 60) discloses the fact that this statement appears after the signature of Henry W. Elliott, and it can not, therefore, be construed as a portion of such report. Furthermore, how the Commissioners can question Mr. Elliott's power to compute the number of seals on the Islands, as they have done, and still rely at all on his computation as to the number of barren females needs explanation.

Alleged recognition of decrease by lessees.

The second mode by which they endeavor to show a decrease in the seal herd prior to 1880 is by pointing to an alleged recognition thereof on the part of the lessees in the reduction made by them of their catch in 1875, and to an alleged lowering of the standard of weights of skins. The Report proceeds as follows: "In the same year [1875] the number of skins obtained was considerably reduced in the face of a steady market and before the decline in prices of the two succeeding years" (Sec. 44). This statement is clearly incorrect, as is shown by the references cited.[1] Another allegation as erroneous as the foregoing is contained in the state ment of the Report that the standard of skins was lowered from time to time, implying an increasing scarcity of males (Sec. 694). In 1876 the average weight of all the skins of the Alaska catch was 8 pounds, which remained about the average till 1886, the average weight being in that year $10\frac{9}{10}$ pounds; from that time, coincidentally with the increase of pelagic sealing, the weight dropped to $9\frac{2}{3}$ pounds in 1886, $8\frac{3}{5}$ pounds in 1887, $8\frac{1}{2}$ pounds in 1888, and finally in 1889 to $7\frac{85}{100}$ pounds, the lowest standard ever reached.[1] The United States, therefore, deny the statements made in the Report as to the reduction of the "standard of weights" (page 119, C).

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[1] British Comrs. Rept., p. 132. Appendix to Case of the United States, Vol. II, pp. 558, 585. Table of seals taken on Pribilof Islands for all purposes, *post* p. 427.

Average weights of Alaskan catch, 1876–1889.

The Commissioners also rely upon a statement alleged to have been made to them by Mr. Daniel Webster that, in 1874 and 1875, from 35,000 to 36,000 skins were taken from Northeast Point rookery and that, since 1879, from 29,000 to 18,000 skins only had been taken there, thus implying a large decrease in the seals resorting to this great rookery (Sec. 677). The annual killings on Northeast Point are combined in a table submitted herewith,[2] which gives the numbers annually taken thereon and the percent-

The number of seals taken from Northeast Point.

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[1] Max Heilbronner, *post* p. 369 and table facing.

[2] Table of seals killed on Northeast Point, *post* p. 427.

The number of seals taken from North-east Point.

age to the whole number killed on St. Paul Island. From this table it appears that in 1873 26,369 seals were taken, being 34.9 per cent of the whole number; in 1874, 34,526, or 37.5 per cent; in 1875, 35,113, or 39 per cent; in 1888, 33,381, or 39.7 per cent; and in 1889, 28,794, or 53.9 per cent. The average percentage for the nineteen years during which the lease may be said to have been in operation (some 3,400 only having been taken the first year under the same) is 31.4. The Commissioners give the number taken in 1889 as 15,076, claiming the same to be from official records, but the citation given is to a report to the House of Representatives printed in 1876 (Sec. 677). Evidently this is a clerical error, but it deprives the United States of the opportunity to examine the authority intended to be cited.

Alleged resort to reserved areas in 1879.

The question of driving in 1879 from areas, before reserved and untouched, is used in the Report to show that the male seals had decreased to such an extent as to compel the resort to these hauling grounds. The Commissioners refer to this in the following words: "Whatever may have been the detailed history of the seal interests on St. Paul in the intervening years, the fact that in 1879 it became necessary for the first time to extend the area of driving, so as to in-

Alleged resort to reserved areas in 1879.

clude Zapadnie and Polavina rookeries, or the hauling grounds adjacent to them, shows conclusively that a great change for the worse had already occurred at that date" (Sec. 684). This statement is not in accord with the facts. Prior to 1879 Polavina had been driven from every year but two, and Zapadnie had supplied its portion to the quota of skins every year of the lease prior to 1879, as is shown in the table cited.[1] The United States, therefore, insist that this statement in the Report should not be considered, in examining the question as to the cause of the decrease of the seal herd. The question of overdriving and redriving has already been fully treated of in the Case of the United States;[2] it may be noted, however, that Mr. Elliott is quoted as stating that overdriving was first begun in 1879 (Sec. 714), which is the year mentioned in the erroneous statements, above referred to, as to the commencement of driving from Polavina and Zapadnie.

No hauling grounds ever reserved.

Overdriving and redriving subsequent to 1880 irrelevant.

It is insisted by the United States that driving and redriving after the introduction of pelagic sealing, if any occurred, are directly chargeable to the condition created by open-sea hunting.

Denial of decrease prior to 1880.

The United States, therefore, deny that any valid evidence has been advanced by the Com-

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[1] Appendix to Case of the United States, Vol. II, pp. 117-127.

[2] Case of the United States, p. 158.

Denial of decrease prior to 1880.

missioners sufficient to establish that any portion of the seal herd decreased prior to 1880, or that there was a paucity of male life during that period on the breeding grounds, or that the management and methods in force on the Pribilof Islands have been a cause of decrease in the Alaskan seal herd.

## PELAGIC SEALING.

The Report an apology for pelagic sealing.

That portion of the Report of the British Commissioners which considers the effects of pelagic sealing upon the Alaskan herd is in the nature of an apology and an attempted justification, for the Commissioners specifically admit that pelagic sealing is indiscriminate (Sec. 633) and tends towards decrease (Secs. 60, 71). The apology rests upon three propositions which they endeavor to establish by evidence principally obtained from interested parties at Victoria and which are herein treated in the order of their importance as recognized in the Report.

### 1. *That the percentage of female seals in the pelagic catch is not large.*

The Indian evidence submitted.

The Report first cites in this connection so-called " evidence," alleged to have been obtained from Indian hunters at various points along the Northwest Coast (Secs. 635–641), and in which there is a careful avoidance of names of informants. It is insisted by the United States that such testimony is valueless for the purpose of establishing any conclusion worthy to be relied upon in this controversy.

The Indian evidence submitted.

The second class of testimony presented to sustain the position of the Report is obtained from sworn statements of Canadian sealers, which the Commissioners admit are not "entirely untinctured by motives of personal interest" (Sec. 634). These alleged statements of Indians, whose names are not made known, and of other witnesses, admitted to be subject to suspicion, are the sole foundation, so far as matters of fact are concerned, for the defense by the British Commissioners of pelagic sealing.

Testimony of interested parties submitted.

The largest percentage of females admitted by these "most experienced and intelligent pelagic sealers" (Sec. 642) to have been taken by them along the Northwest Coast is fifty out of one hundred seals, and but three men make this admission (Secs. 644, 645, 646). The other witnesses quoted (fifteen in number) vary considerably in their opinions as to the number of females taken in a catch, the percentage alleged ranging from two and a half to over forty, the majority giving it as from twenty to thirty (Secs. 644, 645, 646). It is difficult to understand how these statements can be harmonized with the de-

Percentage of females admitted to be taken.

Statements inconsistent with the Report.

Statements inconsistent with the Report.

pleted condition of the male life of the Pribilof seal herd, so often alleged in the Report, and with the statement that "the persistent killing of young males has led of late years to the existence of a very large surplus of females, and that, therefore, the proportion of females to the whole number of seals, whether at sea or ashore, is, at the present time, according to the information obtained by us, quite abnormal" (Sec. 635). As this information last referred to has evidently not been published by the Commissioners in connection with their discussion of pelagic sealing, unless it is embodied in the statements obtained at "a conference held with a number of representative pelagic sealers" (Sec. 648), at which conference "no degree of reticence was shown in answering direct questions on all points involved" (Sec. 648), it is impossible to draw any conclusions therefrom, except that this information is in direct contradiction to the testimony of the witnesses named in the Report.

The statements in the Report denied.

In view of the admitted untrustworthiness of the evidence advanced, and in view of the conclusive proof presented in the Case of the United States on this question, the United States deny that the percentage of females in the pelagic catch has been exaggerated in their case, and present herewith as corroborative evidence on

Capt. Hooper's investigations, summer of 1892.

this subject the report of Capt. C. L. Hooper, U. S. R. M., who cruised in Bering Sea during the summer of 1892 and under the direction of the Government of the United States made a series of systematic observations as to the distribution and classes of seals found in those waters, for which purpose he took a limited number of seals at sea.[1] The result of his observations and experiments was that, of 41 seals shot and secured, 29 were females. Mr. Malowanski, the agent of the Russian Sealskin Company on the Commander Islands, examined about 2,700 skins taken from sealing schooners, seized in the neighborhood of those Islands by the Russian authorities during the summer of 1892, and found that over 90 per cent were the skins of female seals.[2]

Catches of vessels seized by Russia, 1892, 90 per cent. females.

This is also verified by Mr. Grebnitzki,[3] the Russian official in charge of the Commander Islands, and by an examination of over 1,000 of the same skins specially made in London.[4] The depositions of the expert furrier Mr. Behlow, who has examined the catches of a number of sealing schooners entered at the port of San Francisco during the summer and fall of 1892,

Examination of pelagic catches, 1892.

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[1] Report of Capt. C. L. Hooper, *post* table facing p. 219.

[2] John Malowanski, *post* p. 374.

[3] N. A. Grebnitzki, *post* p. 366.

[4] Statement by C. W. Martin & Sons, *post* p. 417.

Examination of pelagic catches, 1892.

confirm the fact that a very large proportion of the pelagic catches consist of female seals.[1]

Proportion of females taken at sea prior to 1870.

This large ratio of females taken at sea does not differ from that observed before the Pribilof Islands were leased. In the official report on the seal question made by a special agent of the United States on November 30, 1869, the following appears: "Nearly all the 5,000 seals annually caught on the British Columbian coast are pregnant females. * * *,"[2] and Capt. Bryant, in 1870, also states that "formerly in March and April the natives of Puget Sound took large numbers of pregnant females."[3]

2. *That pelagic sealing in Bering Sea is not as destructive to seal life as pelagic sealing in the North Pacific.*

Grounds for the Report's statements.

There is an evident attempt on the part of the British Commissioners to establish that the principal harm to the seal herd resulting from pelagic sealing is inflicted during the herd's migration in the Pacific Ocean. This is based, primarily, on the assumption that no gravid females are taken in Bering Sea (Sec. 648), and that the alleged occasional deaths of "a few females in milk" (Sec. 649) does not destroy the offspring of such females (Secs. 355, 356).

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[1] C. J. Behlow, *post* pp. 353–358.

[2] Ex. Doc. No. 32, 41st Cong., 2d Sess., p. 39.

[3] Bull. 2, Mus. Comp. Zoölogy, p. 88.

Grounds for the Report's statements.

It will be seen, on an examination of the statements of the pelagic sealers quoted in the Report (Secs. 645, 646), that but eight refer to the number of females taken in Bering Sea, and these give percentages which are practically the same as those given for the catch in the North Pacific. It is, therefore, conceded that the destruction of female life in Bering Sea is as great as along the Northwest Coast. The distinction is made, however, that no gravid females are taken in Bering Sea. It must be recollected, in this connection, that the admitted period of gestation of the fur-seal is "nearly twelve months" (Sec. 434), and that, therefore, an adult female which has been fertilized is pregnant at all times when found in the water, and certainly so if the fact alleged in the Report, that the female remains on the rookeries from four to six weeks after giving birth to her young, could be established (Secs. 306, 307).

Pregnant females.

The designed implication that very few nursing female seals are taken by pelagic sealers (Sec. 649) is based on pure assumption, no evidence being advanced to support it. Capt. Hooper, already referred to, states that of 29 female seals taken by him in 1892 in Bering Sea, 22 were

Nursing females.

Capt. Hooper's investigations, 1892.

Examination of seals by C. H. Townsend, 1892.

nursing females;[1] and Mr. C. H. Townsend, of the U.S. Fish Commission, the well-known naturalist who accompanied him, includes in his deposition a photograph of two half-skinned cows taken August 2, 1892, 175 miles from the Pribilof Islands,[2] exhibiting the distended mammary glands, "which in all cases were filled with milk." [2]

That the pups of these nursing cows are dependent solely upon their mothers for nourishment has already been discussed both in the Case of the United States and in this Counter Case.[3]

Dead pups on the rookeries.

The Commissioners, to support their position, endeavor to explain away the obvious inference derivable from the fact that a large number of dead pup-seals were observed by them on the Pribilof rookeries during their cursory examination of seal life on the Islands. It is evident, from the efforts made and theories advanced to explain this mortality, that the Commissioners considered the presence of these bodies *prima facie* evidence of the fact they endeavour to disprove (Secs. 344–356). These officials have, through some strange circumstance, been led into the belief that they were the first to

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[1] Capt. Hooper's report, *post* table facing p. 219.

[2] C. H. Townsend, *post* p. 394.

[3] *Ante*, p. 53.

**Dead pups on the rookeries.**

observe this mortality among the pups on the rookeries (Sec. 83), from which belief they draw the inference that "the death of so many young seals on the Islands in 1891 was wholly exceptional and unprecedented" (Sec. 355). The depositions, however, of many witnesses appended to the Case of the United States show not only that dead pups had been observed on the rookeries as early as 1885, but that the numbers had after that year annually increased.[1] Mr. J. Stanley-Brown testifies that he had already seen and noted the dead bodies before the Commissioners arrived at the Islands in 1891, and that the cause of death had been fully discussed by those on the Islands.[2]

**Cause of death.**

The same opinion as to the cause of this mortality, which "in no instance was * * * at first voluntarily advanced" (Sec. 83) to the Commissioners, namely, "the killing of the mother at sea" (Sec. 83), existed for several years before the British officials examined the Pribilof rookeries.[3] It is unfortunate for the position taken by the Commissioners, to the effect that the mortality was unusual and that the cause assigned

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[1] Appendix to Case of the United States, Vol. II, pp. 32, 39, 51, 71, etc.

[2] Appendix to Case of the United States, Vol. II, p. 19.

Appendix to Case of United States, Vol. II, pp. 32, 39, 51, 71, etc.

Cause of death.

by those on the Islands a day or two after the investigations by these officials was a novel suggestion, that, notwithstanding the "care" asserted by them to have been taken to complete their personal knowledge of all documentary evidence obtainable, "including the previous official correspondence" (Sec. 8), they should have overlooked a note from Mr. Blaine to Sir J. Pauncefote, dated March 1, 1890 (Parliamentary Paper [C, 6131], 1890, p. 424), in which were inclosed extracts from an official report made to the House of Representatives in 1889, which document is so often quoted in the British Report. Among these extracts appears the following statement made by Dr. H. H. McIntyre (*ibid.*, p. 430):

Mr. Blaine's note of March 1, 1890.

"The marauding [pelagic sealing] was extensively carried on in 1885 and 1886, and in previous years, and of course the pups that would have been born from cows that were killed in 1885, or that perished through the loss of their mothers during that year, would have come upon the islands in 1888. * * * I would say, further, that if the cows are killed late in the season, say in August, after the pups are born, the latter are left upon the island deprived of the mother's care, *and, of course, perish.* The effect is the same whether the cows are killed before or after the pups are dropped. The young perish in either

**Mr. Blaine's note of March 1, 1890.**

case" (*ibid.*, p. 430). At another place, quoting from the testimony of Jacob H. Moulton, the following appears: "Q. When a female is nursing her young and goes out for food and is killed or wounded, that results also in the death of her young?—A. Yes, sir" (*ibid.*, p. 432).

**Causes of death alleged in the Report.**

This explanation of the cause of the death of pup-seals is not recognized by the Report, except to contradict it. In place of it four specific causes are advanced, "to which the mortality noted may be attributed with greatest probability" (Sec. 356): First, the killing of the mothers by taking them in "drives" from the borders of the breeding grounds; second, an epidemic disease; third, crushing of the pups in stampedes; and, fourth, raids on the rookeries (Sec. 356, a, b, c, d).

**1. Driving and killing of the mothers discussed.**

The first cause alleged, namely, the driving and killing of the mothers, is unsupported by any proof whatsoever, and will not account for the deaths on Tolstoi Rookery, where the greatest number of bodies were seen by the Commissioners (Sec. 350), because no "drive" was had in 1891 within a quarter of a mile of that rookery.[1]

**2. An epidemic.**

The second cause alleged, an epidemic disease, is mere hypothesis, and has already been treated in the Case of the United States.[2]

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[1] J. Stanley-Brown, *post* p. 388; W. H. Williams, *post* p. 399.

[2] Case of the United States, p. 216.

**3. Pups crushed in stampedes.**

The third alleged cause, the crushing of the pups in stampedes, has no evidence to support it. The only instance of even a supposed stampede on any breeding grounds is mentioned in the Report in the following words: "During the summer of 1891 a panic was caused on the Reef Rookery of St. Paul Island by the drifting over it of the smoke from a steamer which was entering the anchorage there" (Sec. 332). The Commissioners do not specify the information upon which this statement is made, and Mr. J. Stanley-Brown testifies that no one saw such an alleged stampede.[1] The difficulty and practical impossibility to cause a stampede or create a panic on a breeding ground are clearly shown by Dr. H. H. McIntyre,[2] Mr. J. Stanley-Brown,[1] and others conversant with seal life.[3] If a stampede ever did take place among the breeding seals, no evidence has been advanced to prove it.

**4. Possible raids as a cause discussed.**

The fourth and last cause, which is stated to be "within the bounds of probability" (Sec. 356, p. 64), is that the female seals were killed by raiders, or by a stampede resulting from a raid. The Report offers no evidence whatever of such

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[1] *Post* p. 388.

[2] *Post* p. 371.

[3] W. H. Williams, *post* p. 398.

**4. Possible raids as a cause discussed.**

a supposed raid, and even alleges that it must have been unknown to those on the Islands (Sec. 355, p. 64), and the further fact that numbers of dead pup-seals were observed by the Commissioners on rookeries miles apart necessitates the assumption that there were several distinct raids, of which no traces could be found. At this time, also, when so many dead pups were found, the waters about the rookeries were patrolled by American and British war ships.[1] On what this assumed cause of death is based, it is, therefore, difficult to comprehend.

**All the bodies emaciated.**

All the bodies of pups examined by Dr. Ackerly ("Acland," in the Report, Sec. 352) and by Dr. Gunther (Sec. 354) were without food in the stomachs, and the testimony presented in the Case of the United States[2] shows that these bodies were all very much emaciated. It seems an extraordinary circumstance that all the young seals destroyed by stampedes, epidemics, or raids, if any of these were the cause, should have been starvelings.

**Great decrease of dead pups in 1892.**

The reports from the Islands show an enormous falling off in the number of dead pups on the rookeries in 1892 as compared with 1891. Those who visited the Islands in 1892 make the

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[1] Charts of cruises, 1891, Nos. 1, 2, and 3.

[2] Case of the United States, p. 213.

Great decrease of dead pups in 1892.

following statements. Mr. Stanley-Brown, who was also on the Islands in 1891, says: "Dead pups were as conspicuous by their infrequency in 1892 as by their numerousness in 1891."[1] Col. Joseph Murray, who has been Assistant Treasury Agent on the Pribilof Islands from 1889 to the present time, states: "I went over the rookeries carefully in 1892 looking for dead pups. The largest number on any rookery occurred on Tolstoi; but here, as on the rookeries generally, but few of them were to be seen, as compared with last year. This was the first time in my four seasons' residence on the Islands that the number of dead pups was not greater than could be accounted for by natural causes."[2] And Mr. A. W. Lavender, the Government agent in charge of St. George Island, made an actual count of the dead pups on the rookeries of that Island, August 29, 1892. He found on the five rookeries 41 dead pups, "all of which were near the water."[3] Professor Evermann, the expert naturalist of the Fish Commission, estimates the number of dead pups on Polavina Rookery in 1892 at less than 250, and states that there were more dead pups here than on all the other rookeries combined.[4]

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[1] J. Stanley-Brown, *post* p. 388.

[2] Joseph Murray, *post* p. 378.

[3] A. W. Lavender, *post* p. 263.

[4] B. W. Evermann, *post* p. 271.

Cause of decrease of dead pups.

In consequence of the zealous and efficient efforts of the naval vessels charged with the protection of the seal herd and the enforcement of the *Modus Vivendi*, few sealing vessels entered the eastern half of Bering Sea in 1892, and those waters were practically free from open-sea hunters. If the cause of the mortality of 1891 among the pups was any of those advanced by the Report, it is a remarkable and, for the opinion of the Commissioners, an unfortunate circumstance that with the decrease of sealing in Bering Sea dead pup-seals have decreased likewise. On the other hand, the increase of sealing in Asiatic waters about the Commander Islands has been followed by a large increase of deaths among young seals on the Russian rookeries.[1]

Increased mortality on Russian rookeries.

Comparative sizes of Bering Sea and Pacific catches.

The destructiveness of the Bering Sea catch, as compared with that in the North Pacific, is further shown by the relative sizes of such catches. A compilation made from the statements of yearly catches of the Victoria sealing fleet, attached to the Report of the British Commissioners (pp. 205–212), shows that the average catch per vessel for three years (1889–1891) along the Northwest Coast was 587, while the Bering Sea catch for the same period of time was 783.[2] It is impossible to compute accurately the

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[1] John Malowanski, *post* p. 374; N. A. Grebnitski, *post* p. 366.

[2] Tables compiled from Commissioners' tables, *post* p. 411.

Comparative sizes of Bering Sea and Pacific catches.

ratio between the North Pacific and Bering Sea catches for a longer period, as prior to 1889 the Bering Sea catch included a portion of the catch in the North Pacific (p. 211, note).

Sealing season in Bering Sea and Pacific compared.

The Report, in treating of pelagic sealing along the coast, states that the season extends from February to June, inclusive, and that in Bering Sea it includes July and August (Secs. 132, 212, 308, 582). It can be assumed, therefore, from the statements in the Report, that the coast catch occupies four and one-half months in taking and the Bering Sea catch but two months. On the authority of these statements above noted a table has been compiled, which shows the average daily catch per vessel for three years (1889–1891) along the coast to have been 4.3 and in Bering Sea 13.[1] This includes 1891, when the enforcement of the *Modus Vivendi* seriously curtailed the season in Bering Sea. The United States, therefore, contend that pelagic sealing in Bering Sea is at least three times as destructive to seal life as that along the Northwest Coast.

Average daily catch in Bering Sea and Pacific compared.

### 3. *That the waste of life resulting from pelagic sealing is insignificant.*

This third proposition is advanced in the Report in defense of the method employed in

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[1] Table compiled from Commissioners' tables, *post* p. 411.

Waste of life insignificant.

taking seals in the open sea: and the Commissioners, in order to establish their position, collect and quote the statements of a number of persons who disagree with the proposition which the Report endeavors to substantiate (Secs. 613, 614). These statements are all characterized as being made by persons "presumably interested in, or engaged in protecting the breeding islands, but without personal experience in the matter" (Sec. 615). The Report then proceeds to array against these opinions a number of statements "for the most part made by persons directly interested in pelagic sealing," but which, it is alleged, "must be considered as of a much higher order of accuracy" (Sec. 616) than the former statements. These interested parties thus quoted in the Report (Secs. 616–621) state that the Indians lose of the seals killed by them "very few" (Sec. 618), "at most, a few" (Sec. 619), and "one per cent" (Secs. 617, 621); the white hunters, on the other hand, are credited with losing from 3 to 6 per cent (Secs. 616–621). The Commissioners then present a number of statements (Secs. 623–626) collected from inexperienced individuals, which are open to the same criticisms as the adverse statements first quoted in the Report.

The evidence advanced in the Report.

Percentage of seals lost by Indians.

Percentage lost by white hunters.

Tabulated statements of white hunters.

An endeavor is then made "to elucidate the question" under consideration by tabulating a number of statements made by white hunters and Indians, some of which are supported by their depositions and others not. "The results of this method of treatment" show that the white hunters affirm that they lose but 4 per cent of the seals they kill, while the Indians give their loss as 8 per cent (Sec. 627). The table entitled "White Hunters" (p. 107) is averaged, while the table entitled "Indian Hunters" (p. 108) is not, for the obvious reason that these Indians (Sec. 627) appear to have lost twice as many seals as the whites, which is in direct contradiction of the statements quoted in the Report, where the witnesses speak of both classes of hunters (Secs. 616–621). If the Indian statements are to be accepted that 8 out of 100 seals killed by them are lost, and also the statements of Captains Warren, Petit, and others (Secs. 616–621) that the white hunters lost five times as many as Indian hunters, then the former are admitted to lose at least 40 per cent of the seals they kill. It is difficult to harmonize this conclusion with the table entitled "White Hunters" (p. 107), and the evidence thus presented is so contradictory that it is hard to see how any conclusions could have been reached by the Commissioners.

Inconsistencies of statements.

Sources of "White Hunters" table.

The table entitled "White Hunters" is made up from the statements of sixteen witnesses; five of these (Nos. 1, 7, 20, 26, and 27, p. 107) state specifically that the loss of seals they refer to are seals lost *by sinking;* six others, examined at the same time as the former witnesses, do not state what they mean by "seals lost," but it is to be presumed their meaning is the same; the statements of three others whose evidence "was personally obtained" can not be examined on this point, as such statements have not been published; Abel Douglass's ratio of loss is given in the table without reference to where it was obtained, so that what he means by "seals lost" is impossible to determine; the one remaining hunter used in the compilation of the table (William Fewing) is the only one who definitely, or impliedly, states that "seals lost" refers to those escaping as well as to those that sink, and this is particularly noted in the table under "Remarks."

Table only gives seals lost by sinking.

It can be fairly assumed, therefore, that this table only represents the seals lost by sinking. The whole question, so important to this controversy, as to how many seals are lost by wounding is summed up in the vague admission, that "a certain proportion of the seals shot of course escape" (Sec. 628), and is dismissed by calculat-

Table only gives seals lost by sinking.

ing the number of encysted bullets found in male seals killed on the Islands in 1890, showing an average of one bullet to 280 seals killed (Sec. 628). The notion that the carcass of every seal killed on the Islands is searched for encysted bullets is sufficiently absurd, but it seems to be assumed in the reasoning of the Commissioners.

Seals lost by wounding.

The necessarily large percentage of seals which lose their lives by wounding is shown by Mr. Townsend in his account of his experience as a pelagic hunter.[1] He states that "many times the animal is wounded sufficiently to get out of reach of the hunter before it dies; "[1] and, again, "it is from the instantly killed the seals are secured; the wounded animal uses its death struggle to get out of reach."[1] It is evident how much this class of "seals lost" must outnumber those which, killed outright, sink before they can be secured;[2] and yet the Commissioners have, presumably through oversight, ignored this important factor of waste of life and have dealt solely with the seals which pelagic hunters lose by the sinking of the carcass.

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[1] *Post* p. 395.

[2] See also reports of Capt. C. L. Hooper, *post* pp. 208-219.

The bases for the apology insufficient.

The United States, having reviewed these three propositions set forth in the Report, namely, (1) that the percentage of female seals in the pelagic catch is not large, (2) that pelagic sealing in Bering Sea is not as destructive to seal life as in the North Pacific, and (3) that the waste of life resulting from pelagic sealing is insignificant, deny that any one of these grounds for the Commissioners' apology have been, or can be, established.

## SECOND.

### MATTERS UPON WHICH THE REPORT RELIES TO ESTABLISH CONCLUSIONS ADVANCED THEREIN AND TO FORMULATE THE REGULATIONS RECOMMENDED, WHICH MATTERS HAVE NOT BEEN DEALT WITH IN THE CASE OF THE UNITED STATES.

### HABITS OF THE FUR-SEALS.

### 1. *That the Alaskan sea herd has a defined winter habitat.*

**The "winter habitat" theory.**

The Commissioners have advanced a most extraordinary theory as to the life history of the Alaskan seal herd. It is presented in the following words: "The fur-seal of the North Pacific may thus be said, in each case [referring also to the Commander herd], to have two habitats or homes between which it migrates, both equally necessary to its existence under present circumstances, the one frequented in summer, the other during the winter" (Sec. 28). Again, the Report states that the portion of sea lying off the West Coast, between the 56th and 46th parallels of north latitude, which limits include the whole length of the British Columbian coast, "is the *winter habitat* of the fur-seal of the eastern side of the North Pacific") Sec. 192, p. 31), and that Bering Sea may be named "their *summer habitat*" (Sec. 192, p. 31).

Object of proposing this theory.

This theoretical proposition of an animal possessing two homes is contrary to what has been observed in respect to the habits of animals in general, and is advanced for the sole purpose of establishing a property interest in the Alaskan seal herd, resulting from the alleged presence of seals for several months in the waters contiguous to Vancouver Island. This object is shown from the following statement in the Report: "This independent native hunting [by the Indians of British Columbia] is undoubtedly a primitive vested interest of the coast tribes, and its character in this respect is strengthened by the fact, now made clear, that the winter home of the fur-seal lies along, and is adjacent to, the part of the coast which these seal-hunting tribes inhabit" (Sec. 113).

The bulls do not resort to the "*winter habitat.*"

An examination of the evidence (if statements made by the Commissioners without giving the names of their informants can be so called) on which this remarkable proposition is advanced shows an important fact, which seems to have been entirely overlooked by the Commissioners. It is, that "the full-grown males, known as 'beachmasters' or 'seacatchie,' have seldom or never been reported to the south of the 50th parallel" (Sec. 193). It is evident that the Commissioners never heard of a bull seal below that

The bulls do not resort to the "*winter habitat.*"

parallel, nor do they anywhere state that they ever heard of a full-grown male below the 56th parallel, the assumed northern limit of the winter habitat (Sec. 192, p. 31) which they have created, and Capt. Hooper particularly states that bulls are seldom seen below Baranoff Island, the lower extremity of which is above the said parallel.[1] This southern "home" is, therefore, according to the Report, resorted to by but a portion of the seal herd; and that essential part of all animal life, the virile male, has, as is practically admitted, no home but the Pribilof Islands. The new and peculiar habitat alleged by the Commissioners is, therefore, only the winter resort of adult females and the young of both sexes, the remainder of the herd being confined to one home, the Pribilof Islands.

The data insufficient to establish.

It is, however, denied by the United States that the seals, during any portion of their migration, can be said to remain within any limits, such as are assumed in the Report, or that sufficient data have been produced, of any sort whatsoever, to warrant the construction of Chart II (facing p. 150), especially the area to the right of such chart marked in a blue colour, which is stated to represent the "winter habitat" of the fur-seal.

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[1] Appendix to Case of the United States, Vol. I, p. 504.

Testimony in opposition.

Capt. Kelley, one of the witnesses whose testimony is submitted with the Report (p. 219), states that he has sealed south of Cape Flattery "and has followed the seals all along the coasts of British Columbia to Bering Sea" (p. 219, Question 3). Capt. Petit also makes the same statement (p. 220, Question 5). It is evident from these statements that sealing below the area termed "winter habitat" in the Report was a matter of common occurrence, and not unusual, as would be inferred from the chart heretofore referred to. This is also supported by the statement of every witness whose deposition is submitted with the Report and who was questioned on this point (pp. 231, 237).

A quantity of testimony may also be found in the Case of the United States proving that sealing begins off the Californian coast.[1] The Commissioners state that "it would appear no large catches have been recorded south of the Columbia River, and much of what has been classed in the returns as 'south coast catch' has been obtained off the entrance of the Straits of Fuca" (Sec. 190). This statement is entirely unsupported by evidence of any sort, and seems to have been advanced for the sole purpose of establishing the "winter habitat" theory. It may also be noted in

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[1] Appendix to Case of the United States, Vol. II. pp. 330, 331, 344, 346, etc.

Seals followed *along* Vancouver Island.

this connection that both Capt. Kelley and Capt. Petit, above mentioned, state that they have followed the seals "along" the coast of British Columbia, which is evidence of the fact that the seal herd was moving northward when hunted off Vancouver Island.

Sea scattered during winter months.

The distribution of the Alaskan seal herd is much more scattered during the winter months than is implied by the Report, and the range of portions of the herd is much farther south and west than appears on the Commissioners' chart of migration. Capt. Hooper, R. M., who extended his observations of 1892 in Bering Sea into September and continued his investigation of seal life and the migration of the herd until some time in November, states: "Those that leave [the Pribilof Islands] earliest go farthest south, arriving on the coast of California, and those leaving later reach the coast further up. * * * They appear at about the same time off a long line of coast, reaching from California to Washington. When they are so found they are known always to be moving northward up the coast."[1] This is also more fully treated in his report of November 21, 1892.[2]

Capt. Walter H. Ferguson, who has followed

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[1] C. L. Hooper, *post* p. 370.

[2] Report of Capt. Hooper, November 21, 1892, *post* p. 228.

Seals found in lat. 40° N. and long. 172° W.

the sea as a profession for twenty years, and who made a careful investigation for six years of the winter resorts of the Alaskan seals for the purpose of hunting them during that season, says: "All reports tend to show there must be an immense feeding ground between latitude 40° and 42° north and extending from longitude 172° west to 135° west. * * * The reports of these vessels all show for the months of November, December and January, large bodies of fur-seal in this locality."[1] In a volume entitled "List of Reported Dangers in the North Pacific Ocean," compiled by the United States Hydrographic Office and published in 1871, mention is made of an area about 40° north latitude and 150° to 151° west longitude where the sea swarmed with seals.[2] It is evident, therefore, that the limited range of the fur-seal during its migration, as depicted by the Commissioners, is erroneous.

New migration chart presented with Counter Case.

From the further data collected and mentioned above a new migration chart has been constructed, correcting and modifying the one submitted with the Case of the United States. The attention of the Tribunal of Arbitration is herewith directed to this chart, which the United

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[1] Walter H. Ferguson, *post* p. 362.

[2] *Post* p. 288.

New migration chart presented with Counter Case.

States insist is more accurate and based on fuller data than the chart contained in the Report.[1]

2. *That the Alaskan seal herd has changed its habits as a result of disturbance on the breeding islands and of pelagic sealing.*

Increased pelagic nature alleged.

(*a*) The first assertion advanced by the Report under this head is that the seals, for the reasons above stated, have become more pelagic in their nature (Secs. 44, 85, 86).

This assumption is resorted to, as it appears, to show that land is not a necessity to the fur-seal and in order to harmonize the sworn statements of the pelagic sealers appended to the Report, that at sea the seals have not decreased, with the acknowledged decrease on the Islands. To support this proposition the evidence of these interested sealers is advanced to show that there has been no decrease at sea similar to the decrease on the Islands, but rather a possible increase (Secs. 87, 89, 94, 402). At the same time it is asserted (Sec 281) that no "stagey" seals are taken at sea, that the "stagey" period on the rookeries lasts about six weeks, and that this period of hair shedding is caused by prolonged resort to land. All seals must at some

"Stagey" seals taken at sea.

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[1] Chart of migration, Portfolio of maps and charts, appended to the Counter Case of the United States.

"Stagey" seals taken at sea.

period each year shed their hair, and it is a fact that many taken in the water are "stagey,"[1] the cause alleged by the Report being undoubtedly the true one. A seal must, therefore, of necessity be on the Islands each year at some period, and it is insisted by the United States that observations on the rookeries and hauling grounds are the only criterion of the numerical condition of the seal herd.

Table of average catch per boat and per man.

Why averages for 1885 and 1826 not used.

Such averages of no value.

The Commissioners also present a table giving the average catch per man and per boat to show that the number taken respectively from year to year has not materially changed, notwithstanding the continual decrease (Sec. 409, p. 74). This compilation begins with 1887 and includes 1891. The years 1885 and 1886 are not used, for a reason which becomes obvious when the statistics in the Report are examined, namely, the average per man in 1885 was 127 seals, or 68 more than in any year given in the table, and in 1866, 77 seals, or 18 more than the highest number in any following year. In the year 1886 the average per boat was 241, or nearly one-third more than in any year thereafter.[2] It must also be recol-

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[1] Charles Behlow, *post* p. 357; C. W. Preiss, *post* p. 384; Walter E. Matin, *post* p. 376; see, also, title-page of London catalogue of sales, *post* p. 412.

[2] These averages are taken from the tables of catches transmitted with the Report, pp. 209, 210.

Such averages of no value.

lected in considering this question that the sealing captains have each year become more and more familiar with the migration route of the seals in the North Pacific and their feeding grounds in Bering Sea, which naturally tends to increase annually the catches in these localities; and it is, therefore, only by the comparison of the catches taken in the older hunting areas, with which pelagic sealers have been familiar for twelve or fifteen years, that any evidence of value can be obtained.

Average per boat in "spring catch," 1886-1891.

For this purpose a table has been prepared from the Commissioners' tables, giving the average per boat for the "spring catch," which is obtained in and about the alleged "winter habitat" of the fur-seal. As there is only one hunter to a boat, the average per man is of no value. This table shows an average of 118 seals per boat in 1886, and a constant decrease each following year until in 1891 it was but 15½.[1] The United States deny, therefore, in view of evidence already presented in their Case[2] and the facts above stated, that the seals have not decreaseed at sea in a like ratio to that observed on the Islands.

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[1] Table of average catch per vessel and per boat, *post* p. 411.

[2] Case of the United States, p. 169.

Independent pelagic herds alleged.

The Commissioners also assert that the seals found in Bering Sea are not seals which have temporarily left the rookeries to feed, but are practically independent pelagic herds (Sec. 219). The only evidence referred to for this is some alleged observations of the direction of the wind and the locality where seals are found, together with the assertion that the locality must be affected by the weather; but these observations are not given, and, even if true, are quite too slender to furnish a foundation for any conclusion.[1]

Increased pelagic nature an assumption.

This suggestion of increased pelagic nature is based on mere assumption, for which no proof, reliable or otherwise, is advanced by the Commissioners, and the United States insist that it is unworthy of serious consideration in this controversy.

(*b*) That the location of the breeding rookeries is dependent solely upon the fact that the seals while there are not disturbed by man.

Change of rookeries based on hearsay.

This assertion (Secs. 523, 524), implying also the possibility of a change of rookeries when the seals are harassed, is partly founded on Indian legends and statements by J. W. Mackay and J. G. Swan, based on hearsay (Secs. 447, 448, 449), that rookeries formerly existed on the North-

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[1] C. L. Hooper, *post* p. 370.

Change of rookeries based on hearsay.

west Coast, and they are summarized in the sections referred to; but such statements the Commissioners have failed to authenticate. By way of further proof of the same assertion the Report presents the allegation that new breeding rookeries had been at times noted on the Kamchatka coast (Secs. 518, 519), which, however, were not visited by the British officials. Mr. Malowanski, who is the agent of the Russian Sealskin Company, was induced by the "various good authorities on the Commander Islands," on whom the Commissioners rely for this statement (Sec. 518), to visit a reputed fur-seal rookery on the Kamchatka coast, and found the reported fur-seals were sea-lions.[1] If all the incipient breeding rookeries alleged to exist on the Asiatic coast were examined, doubtless they would be found to be similar to the one above noted. Mr. Grebnitzki, already referred to, states that he deems it to be wholly improbable that the Commander herd visits any land other than the Commander Islands.[2]

New Asiatic rookeries.

One home of Alaskan seal herd.

The United States deny that the Alaskan seals have any other home than the Pribilof Islands, or that, even if constantly disturbed by man while on the rookeries, they would seek a new habitation. In this connection, the attention of the

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[1] John Malowanski, *post* p. 376.

[2] N. A. Grebnitzki, *post* p. 363.

Pribilof Islands inhabited for 100 years.

Arbitrators is called to the fact that the Pribilof Islands have been inhabited by man for a century, and the seals have not deserted their home though slaughtered indiscriminately in the early years of the Russian occupation; and to the further fact that in 1851–'53 the rookeries of Robben Island were cleared of fur-seals (Sec. 510), but the few that escaped returned to the rookeries in the years following (Secs. 510, 511).

Slaughter on Robben Island, 1851–'53.

Error in statement relied on by Report.

The Commissioners have endeavored to establish their position as to the change of habits of the seal herd, through the undue disturbance of the rookeries, by citing the fact that Capt. Bryant referred to the abundance of fur-seals along the coasts of Oregon, Washington, and British Columbia in 1869 (Sec. 422); and they seek to create the impression thereby that this was directly the result of the great numbers killed in 1868 on the Pribilof Islands. The Commissioners, through no error of their own, have been led into making this incorrect statement. The "Monograph of North American Pinnipeds," quoted by them, so states; but Dr. J. A. Allen, the author of the work, says that the year was 1870, instead of 1869, as erroneously printed.[1] The statement as to the abundance of seals off the Oregon coast was first published by Dr. Allen in the "Bulletin of

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[1] Letter of Dr. Allen, *post* p. 413.

Error in statement relied on by Report.

the Museum of Comparative Zoölogy," page 88, wherein he quotes from a letter received by him from Capt. Bryant, "under date of June 14, 1870," as follows: "The *present year* unusually large numbers have been seen off the coasts of Oregon, Washington Territory, and British Columbia. * * * They were mostly of very young seals, none appearing to be over a year old." An examination of the "Bulletin" on this point by the Commissioners would have revealed the error in the later publication, used by them in their Report, and the further fact that these pup-seals could not have been of sufficient age, while on the Islands, to have been affected by any slaughter whatsoever.

### ALLEGED FRAUDULENT ADMINISTRATION ON THE PRIBILOF ISLANDS.

Indirect charges of fraud in Report.

As already noted (*ante*, p. 68), the British Commissioners have, without making actual charges of fraud, insinuated and apparently endeavored to give the impression that fraud was perpetrated on the Pribilof Islands by the former lessees, the Alaska Commercial Company, in taking sealskins therefrom over and above the number allowed annually by the lease. This covert charge of maladministration is a reflection upon the integrity of the United States

The parties charged.

The parties charged.

officials at San Francisco and those who have at different times for twenty years had the charge and management of the Alaskan rookeries. And, inasmuch as no such increased numbers of skins appear in the reports of sales by Messrs. C. M. Lampson & Company, of London, it involves a reflection, also, upon the integrity of that well-known house.

Great Britain and the frauds charged.

The Government of the United States is loath to believe that Her Majesty's Government intentionally and knowingly adopted these charges against the officials of the United States and citizens of both nations, which are entirely unsubstantiated by evidence, when it incorporated the Report of its Commissioners in its Case before the Tribunal of Arbitration, confidently believing that all such matter, if it had been previously observed by the Agent of Great Britain, would have been expunged from the Report before its submission as a portion of the British Case.

Reason United States consider the charge.

Inasmuch, however, as such charges have become a part of the Case of Her Majesty's Government before the Tribunal of Arbitration, the United States consider it a duty to deal therewith, not because the same are sufficiently definite or important to establish any facts material to this controversy, but for the sole purpose of vindicating the officials of the United States;

Reason United States consider the charge.

nevertheless, always insisting that all such charges of fraudulent practices are irrelevant to the present issue, and are introduced by the Commissioners for the purposes of distracting the attention of the Arbitrators from the true issue and of throwing a general discredit upon the administration of the seal rookeries by the United States.

Fraud, as alleged in the Report.

The charges referred to are presented in the Report in the following words: "Statements have been made to the effect that during the lease of the Alaska Commercial Company frauds were perpetrated in regard to the number of skins taken on the islands and counted for taxation. No direct evidence of this seems to have been produced, but as the official counting of the skins both on the Islands and in San Francisco was done in bundles, each of which was supposed to consist of two skins, it is obvious that, but for observed difference of size and weight, three or even four skins might have been bundled and corded together and counted as two." (Sec. 670.) And, again, the Report states that there were "several instances of the same individual, now in the capacity of an employé of the Company and again as a supervising officer of the Government" (Sec. 52), and the latter assertion is connected

Fraud, as alleged in the Report.

with the statement that the reports made to the Treasury Department by the officials in charge of the Islands are "often contradictory" and "manifestly inaccurate;" one of the reasons for "these discrepancies" being the alleged fact above quoted. The Commissioners give no authority for the last-mentioned statement, nor do they recite the sources of information for their insinuations as to fraud of any kind. It would not be too strong an expression in relation to them to say that they are an inexcusable libel.

No authority for charges.

H. W. Elliott's statements distorted.

The Commissioners have, with the usual "care" employed in their examination of "all documentary evidence" (Sec. 8), culled out of the Census Report of Mr. Henry W. Elliott a statement which gives the impression that the skins taken by the lessees were only counted in bundles on the Islands, and that they were recounted in the same bundles by the customs authorities in San Francisco. Mr. Elliott, however, intended no such conclusion to be drawn, as is evidenced by the following quotation from the same report, page 106: "The skins are counted four times on the island, as follows: by the company's agent and the native chiefs, when they are put into the salt-houses, the latter giving their accounts, after each day's killing, to the government agent; again when they are bundled by the natives, who

Counting skins on Pribilof Islands.

Counting skins on Pribilof Islands.

do the work, as each is paid for his labor by the bundle; by the government agent when they are taken from the salt-houses for shipment, and the fourth time by the first officer of the company's steamer, as they are delivered on board."

Recount at San Francisco.

A few bundles opened.

Packing and shipment.

The bundles were then transported by the steamer to the port of San Francisco and never opened on board the vessel, excepting to rebundle those which had become loose, and then only two skins were placed in a bundle.[1] On reaching San Francisco the bundles were counted by a United States custom-house official and also by an employé of the Alaska Commercial Company.[2] A few bundles were then opened by an agent of the company, to examine into their condition, the number thus opened being from twelve to twenty in the whole cargo.[3] All the Pribilof sealskins, bundled as when they were received, were immediately packed in casks (such packing since 1878 being done at the wharf where the skins were unloaded),[4] taken to the railway station, and shipped to C. M. Lampson & Company, of London.[5]

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[1] M. C. Erskine, *post* p. 360.

[2] Louis Sloss, jr., *post* p. 384.

[3] Gustave Niebaum, *post* p. 382; Louis Sloss, jr., *post* p. 384.

[4] Gustave Niebaum, *post* p. 382; Martin Myer, *post* p. 380; J. B. Brown, *post* p. 358.

[5] Gustave Niebaum, *post* p. 382.

Only two skins in a bundle.

If these bundles had contained more than two skins, such fact would have been known to the London firm; but it is specifically stated by them that they never found more than two sealskins in any of the bundles consigned to them by the Alaska Commercial Company during the nineteen years of the lease.[1] This evidence is further supported by the testimony of the vice-president of the Alaska Commercial Company, who made the annual examination of a few skins from each cargo when the quota arrived at San Francisco;[2] by the sworn statements of the packer of the sealskins;[3] by the foreman of the stevedores who unloaded the company's steamer;[4] and by Capt. Erskine, who has commanded the company's steamer for over twenty years.[5] Those who are familiar with the handling of raw sealskins state that three skins could not be rolled in a bundle without exposure of such fact, and that it would be impossible to roll four skins together under any circumstances.[6] This fact was further verified by Maj. W. H. Williams, who made a special investigation on this point in 1892[7]

Three skins in a bundle would be detected.

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[1] Letter from C. M. Lampson & Co., *post* p. 415; Alfred Fraser, *post* p. 415.

[2] Gustave Niebaum, *post* p. 382.

[3] Martin Myer, *post* p. 380.

[4] James B. Brown, *post* p. 358.

[5] M. C. Erkine, *post* p. 360.

[6] Martin Myer, *post* p. 380; Gustave Niebaum, *post* p. 382.

[7] W. H. Williams, *post* p. 399.

Implied fraud in weight of bundles.

The Commissioners further rely upon Mr. Elliott's statement, that skins weigh from 5½ pounds to 12 pounds (Sec. 671), and upon the comparison of such statement with that of Lieut. Maynard, "an independent observer," who gives the average weight of bundles as 22 pounds and the weight of the largest as 64 pounds (Sec. 672). This "appears" to the Commissioners to require "some explanation" (Sec. 673). The implication is evident, and the United States offer the explanation in vindication of the officers of the Government who are thus charged. A bundle contains not only the two sealskins proper, but salt and blubber, with which they are packed for their preservation; this naturally adds greatly to the weight, as does also the moisture collected by the salt and fur. A bundle will, therefore, sometimes weigh as much as 60 or 70 pounds, if the two pelts are large, and even when consisting of only two skins of "yearling pups," weighing when dry probably 5 pounds, the bundle weighs sometimes 20 pounds.[1] It is also a fact that in the early years of the lease some exceptionally large skins were taken on the islands.[2]

Explanation of weight.

Various counts of skins compared.

A comparative statement of the counts of the sealskins for the entire term of the lease, made, respectively, by the Government official on the

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[1] W. H. Williams, *post* p. 399; Louis Sloss, jr., *post* p. 384.

[2] H. H. McIntyre, *post* p. 373.

Various counts of skins compared.

Islands, the custom-house inspector at San Francisco, the Alaska Commercial Company's packers before shipment to London, and by C. M. Lampson & Company, shows that but 900 more skins were sold during twenty years in London than appear in the original count made when the bundles were loaded on the steamer at the Pribilof Islands.[1] This is an average of 45 skins per year out of a quota of 100,000, which quota was fully taken in seven years only. To this extent, and this extent alone, can fraud be charged.

Practical agreement of counts.

Moore's report of 1875.

In 1875 Special Agent J. S. Moore made a report to the Secretary of the Treasury, embodying the result of certain investigations made by him as to the number of skins taken by the lessees of the Pribilof Islands. He found that 559 more skins had been sold in London than those accounted for in the tax receipts from the Treasury Department, and he submitted a table, compiled by him, giving the number of skins on which tax was paid, the number accounted for as shipped to C. M. Lampson & Company, and the number sold by them. He summarizes the result of his investigation as follows: "I am perfectly satisfied that these figures are correct, unless not only the company, but the customs officers on the Islands, the officers of the ships that bring the

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[1] Max Heilbronner, *post* p. 368.

Moore's report of 1875.

skins, the customs officials at San Francisco and the great house of Messrs. Lampson & Company in London are one and all in collusion and conspiracy to defraud the Treasury of the United States. There would, besides, be another difficulty to overcome, as it would be necessary to keep false books and false entries, while in fact nothing is so easily detected as false bookkeeping.[1]

Employés of lessees.

As to the allegations in the Report that Government officials were formerly employés of the lessees, the United States admit that in one instance a Government agent (John M. Morton), who had charge of the administration of the Pribilof Islands, was formerly in the employ of the Alaska Commercial Company,[2] but deny that any similar case has occurred, and assert that the imputation of fraud from such a circumstance is unwarranted.

Further vindication of the officials and citizens of the United States, to whom the Commissioners have seen fit to impute fraudulent practices and conspiracy to defraud the Government of the United States, is considered to be unnecessary.

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[1] *Post* p. 283.

[2] Gustave Niebaum, *post* p. 283.

## THIRD.

### REGULATIONS PROPOSED IN THE REPORT.

The only regulations sufficient.

The Commissioners of Great Britain have introduced in their Report a number of schemes for the future regulation of taking fur-seals belonging to the Alaskan herd. The United States insist, as claimed in their Case, that they have, upon the facts established by the evidence, such a property and interest in the seal herd frequenting the Islands of the United States in Bering Sea, and in the industry there maintained arising out of it, as entitles them to protection and to be protected by the award of this Tribunal against all pelagic sealing, which is the subject of controversy in this Case. And, quite irrespective of any right of property or of self-defense in respect of their territorial interests, they claim to have clearly shown that no regulations short of prohibition will be sufficient to prevent the early destruction of the Alaskan seal herd.

Jurisdiction of Tribunal of Arbitration.

In a consideration of these regulations suggested, it is apparent that the principal curtailment of seal-killing, in each of the various plans proposed, is to be applied to the Pribilof Islands.

Jurisdiction of Tribunal of Arbitration.

All recommendations applying to the territory of the United States, even if the property of that Government in the seal herd is not considered, as seems to be the case from the proposals advanced by the Commissioners, are irrelevant in this Arbitration. The jurisdiction of the Tribunal of Arbitration does not, according to the understanding of the Government of the United States, extend to territory or territorial waters, which are not in dispute and the rights over which have not been submitted to this Tribunal.

Unfairness of regulations proposed.

The manifest unfairness, however, of the regulations suggested calls for the attention of the United States, as the proposals submitted by the Commissioners demonstrate most clearly the spirit of partiality which is a feature of the whole Report. For this purpose the United States will give brief attention to these suggested regulations; nevertheless, always insisting that all proposals affecting the unquestioned territorial rights of the United States are without the jurisdiction of this Tribunal and are irrelevant to the present contention.

(*a*) *Improvements in the methods of taking seals.*

(*Secs.* 147–150.)

On Pribilof Islands.

The first suggestions advanced by the Commissioners are in relation to improvement in the

On Pribilof Islands.

methods of taking seals on the breeding islands; all of these proposed improvements are already in force on the Pribilof Islands, though the United States admit that in some minor details a change may be beneficial.

At sea.

The second suggestions are as to improvements in the methods employed at sea. The first proposal is to prohibit the use of the rifle. The following statements in the Report show the little importance of such a regulation: "The rifle was introduced though soon superseded by the shotgun, which has now become the usual hunting weapon" (Sec. 584, p. 100); "if killed, as happens in the majority of cases, especially now that the shotgun has superseded the rifle," etc. (Sec. 604); "the use of the shotgun for the purpose of killing seals at sea has now become so nearly universal that it is doubtful," etc. (Sec. 657). It does not seem that the Commissioners can seriously advance a proposition to prohibit a weapon the use of which in pelagic sealing has become obsolete.

Use of the rifle obsolete.

Licenses apply to only half of hunters.

The second improvement is the adoption of a system of licenses for *White hunters*, there being no suggestion made for such licenses for *Indian hunters.* In 1891, according to the Commissioners' table (p. 205), 715 whites and 368 Indians were employed on the vessels constituting

Licenses apply only to half of hunters.

the Victoria sealing fleet. Of all these vessels but three had white seamen (p. 205). It can, therefore, be assumed that at least 360 of the Indians were hunters or canoemen: and, as but two Indians go in a canoe,[1] 180 of the 369 boats and canoes given in the table contained Indian hunters, so that this general "improvement" proposed would only affect one-half of the hunting force of the Victoria fleet. Besides this, the system of licenses proposed, the United States contend, could not be made effective, even if it covered all classes of hunters.

Increased license for steam vessels of no value.

The third "improvement" suggested is to increase the license fee for "vessels propelled by machinery." As but two out of fifty of the Victoria fleet appear, by the table in the Report (p. 205), to have used machinery in 1891, and as their catches were but 50 and 385 skins, respectively, while the average per vessel is shown by the table to have been nearly 1,000, it is impossible to see how such a restriction would be particularly beneficial. It has also been stated by those interested in pelagic sealing at Victoria that the steam vessels used in seal-hunting have never paid expenses.[2]

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[1] Appendix to Case of the United States, Vol. I, pp. 498, 504; Vol. II, pp. 317, 326, 369, etc.

[2] Report of Special Agent Henry, *post* p. 246.

### (*b*) *Restriction in the number of seals to be taken.* (*Secs.* 151–154.)

**Unfairness of limitations proposed.**

The Report presents suggestions whereby it is proposed to limit the number of seals taken. It is observable that the limitations proposed for the Islands are for a fixed number and class of seals; while the restrictions for pelagic sealing are prohibitions as to time and place, no provision being made as to number or kind of seals taken. The unfairness of such proposals is manifest.

### (*c*) *Specific Scheme of regulations recommended.*

**Regulations recommended.**

The Commissioners, after this generalization as to the methods of restriction necessary, present specific limitations "at shore and at sea," which they believe would afford the requisite degree of protection, in view of the actual condition of seal life as it presents itself to them at the present time. (Sec. 155.)

**Limitation of quot on Pribilof Islands.**

The first restriction proposed is to limit the number of seals to be taken on the Pribilof Islands to a fixed maximum of 50,000 (Sec. 155a). This proposed regulation, being applicable to the territory of the United States is, as already noticed, without the jurisdiction of this Tribunal.

**Protective zone proposed.**

The second proposition is to create a zone about the Pribilof Islands with a radius of 20 nautical

Protective zone proposed.

miles, within which pelagic sealing shall be prohibited (Sec. 155b). The Case of the United States has fully dealt with this plan of zonal protection,[1] and the Report itself practically admits the difficulty of enforcing such a prohibition (Secs. 160, 768).

Close season proposed.

The third proposal of the Commissioners is a close season for pelagic sealing, extending from the 15th of September to the 1st of May in each year, with the additional provision that no sealing vessel shall enter Bering Sea before the 1st of July in each year (Sec. 155c). This is based on the assumption that males and barren females constitute substantially the whole of the pelagic catch in Bering Sea (Sec. 648). If, however, this could be established, it is at once evident that, if the alleged faults in the management of the Pribilof Islands were corrected, the class of barren females, alleged as forming a large percentage of the Bering Sea catch (which assertion is advanced as an apology for pelagic sealing), would entirely disappear. Thus the excuse for open-sea sealing is based on the alleged mismanagement of the seal rookeries by the United States.

Basis of proposed close season.

Close season would have little effect.

The period in which sealing is allowed by the regulations proposed is substantially the same as

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[1] Case of the United States, pp. 256–263.

Close season would have little effect.

the time occupied by the sealers in taking the so-called "Sand Point" and "Bering Sea" catches, which in 1891, according to the Commissioners' table (p. 205), constituted 93 per cent. of the total catch of the Victoria fleet. The Commissioners thus propose that the Pribilof Island quota be cut down 50 per cent. and the pelagic catch but 7 per cent.

Not entering Bering Sea before July 1, no concession.

As to the further concession of the Report, that sealing vessels may be prohibited from entering Bering Sea till the 1st day of July in each year, it is to be noted that the Commissioners state that the sea is "now usually entered by pelagic sealers between the 20th of June and 1st of July" (Sec. 649). It can not be that such a useless restriction can be suggested in the Report, except for the purpose of appearing to make a concession when none is really made.

"Compensatory adjustments" proposed.

The Report further proposes that for every decrease of 10,000 seals taken on the Islands an increase of 10 nautical miles be given to the width of protected waters about the islands (Sec. 156). As this is simply an extension of the zonal question to a larger area, it is considered to be unnecessary to further discuss this proposed "compensatory adjustment." A second proposal of the same nature is to curtail the open season for pelagic sealing by seven days if the quota

"Compensatory adjustments" proposed.

on the Islands is reduced 10,000. The Commissioners evidently consider that this suggestion is "a just scale of equivalency as between shore and sea sealing" (Sec. 156); that is, that one week of pelagic sealing equals 10,000 seals killed. As the open season proposed by them consists of nearly twenty weeks, this presupposes a pelagic catch of 200,000 seals, or four times as many as are contemplated by their regulations to be allowed to the Pribilof Islands. It would also make the combined number of skins derived from the Alaskan herd 250,000, which certainly would be more damaging to seal life than the present condition of affairs, even if the United States allowed 100,000 skins to be taken on the Islands.

Supposed pelagic catch, 10,000 a week.

Unfairness of Commissioners shown.

The recommendation by the Commissioners of a series of regulations such as those above considered is clearly indicative of the bias and partisan spirit which appear in nearly every section of their Report.

Alternative methods of regulations.

The alternative regulations proposed (Secs. 163-168), such as entire prohibition of killing seals on the breeding islands and periods of rest, with the necessary governmental charge thereby imposed, are not regarded by the United States as subjects requiring attention in the Counter Case. They are manifestly inadmissible.

## REPLY OF THE UNITED STATES TO THE BRITISH CLAIMS FOR DAMAGES.

In regard to the schedule of claims for damages appended to the Case of Great Britain, upon which findings of fact are asked under the provisions of Article VIII of the Treaty of Arbitration:

Seizures admitted.

The United States admit that a portion of the vessels named in the schedule were seized by their cruisers at or about the time stated, that the vessels were at the times of such seizures in the waters of Bering Sea and more than one marine league from any land owned by or within the jurisdiction of the United States; but such seizures were made upon the waters included in the treaty of cession of March 30, 1867, between Russia and the United States.

Prohibition of sealing in Bering Sea admitted.

As to others of the vessels mentioned in the schedule, the United States admit that they were ordered by the cruisers of the United States to leave Bering Sea, where they were unlawfully engaged in taking fur-seals; and, as to others, that they were about to enter that sea for the same unlawful purpose and were warned not to do so by the cruisers of the United States. But, whether the vessels so ordered out of Bering Sea, or warned not to enter the same, left it, or refrained from entering it, by reason of such

Prohibition of sealing in Bering Sea admitted.

orders and warnings, the United States are not informed save by the statements accompanying said claims, and they do not admit that such orders or warnings were obeyed.

Reasons why seizures made.

The United States charge that each and all of the vessels when so seized were engaged in the hunting of fur-seals in the waters of Bering Sea in violation of the statutes of the United States, and that such seizures were made in accordance with the laws of the United States[1] enacted for the protection of their property interest in the fur-seals which frequent Bering Sea and breed only upon the Pribilof Islands, which Islands are part of the territory of the United States; and that the acts of the crews and owners of these vessels in hunting and catching seals were such as, if permitted, would exterminate the Alaskan seal herd and thereby destroy an article of commerce valuable to all civilized nations.

Vessels seized, owned by United States citizens.

It is further insisted, on the part of the United States, that the steam schooners *Thornton*, *Grace*, *Anna Beck*, and *Dolphin* and the schooners *Sayward*, *Carolena*, *Pathfinder*, *Alfred Adams*, *Black Diamond*, and *Lily*, for the seizure of which claims for damage are made, were at the time of their seizure owned in whole or in part by citizens of the United States, and that, therefore, no claim for damages can be urged in their behalf by Great Britain; that the steam schooners *Thornton*, *Grace*, *Anna Beck*, and *Dolphin* and one-half of the schooner *Sayward* were owned by one Joseph Boscowitz, a citizen of the United States; that James Douglas Warren, in whose name the claim is made as to the steam schooner *Thornton*, had no real interest therein, but that the same was mortgaged to her full value to Joseph Boscowitz, who was in fact the real owner; and that Thomas H. Cooper, in whose name the claims growing out of the seizures of the schooner *W. P. Sayward* and of the steam schooners *Grace*, *Dolphin*, and *Anna Beck* are made, had in fact no interest therein and has in no respect been damnified or sustained loss by the seizures thereof, either as owner of these schooners and steam schooners, their outfits, or their catches, the same being mortgaged to their full value to Joseph Boscowitz, above referred to, and having been conveyed to Thomas H. Cooper, without consideration, for the sole purpose of giving them a registry as British vessels.[1]

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[1] Sec. 1956, Revised Statutes of the United States; see Appendix to Case of the United States, Vol. I, p. 96.

Vessels seized, owned by United States citizens.

Relations of Boscowitz, Warren, and Cooper.

Joseph Boscowitz, United States citizen, owner.

It is also insisted by the United States that the schooners *Carolena* and *Pathfinedr* were in

A. J. Bechtel, United States citizen, owner.

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[1] Deposition of Thomas H. Cooper, *post* p. 320. Affidavit of T. T. Williams, Appendix to Case of the United States, Vol. II, p. 491; *post* p. 351. Testimony in Warren *vs.* Boscowitz, *post* p. 301–320.

A. J. Bechtel, United States citizen, owner.

fact at the time of their seizure owned by one A. J Bechtel, then a citizen of the United States,[1] and that William Munsie and Frederick Carne, in whose names the claim for damages growing out of the seizure of these schooners are made, had in fact no interest in the schooners or their outfits and catches; that the schooners *Alfred Adams, Black Diamond*, and *Lily*, for the seizure of which claims are made in the schedule, were in fact at the time they were seized owned by one A. Frank, who was then a citizen of the United States; that Gutman, in whose name the schooner *Alfred Adams* was registered, was not the actual owner of the schooner, her outfit or catch, but, on the contrary, that the said schooner, her outfit and catch, were owned by said Frank; that after the release of the *Alfred Adams* from seizure her name was changed to *Lily*, in behalf of which damages are also claimed in the schedule, she remaining the property of A. Frank, and he alone being interested in her outfit and catch, and not Morris Moss, in whose name the last mentioned claim is presented; and that said Frank was also the owner of the schooner *Black Diamond*, her outfit and catch, and that he was the real person who sustained damage or loss by

A. Frank, United States citizen, owner.

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[1] T. T. Williams, *post* p. 351.

reason of the seizures of the *Alfred Adams*, *Lily*, and *Black Diamond*.[1]

A. Frank, United States citizen, owner.

It is further insisted, on the part of the United States, that all the items in the several claims in the schedule, designated as "loss of estimated catch," "probable catch," "balance of probable catch," "reasonable earnings for months of October, November, and December," "loss of profits," for seasons subsequent to seizure, and all items in said claims based on future or contingent events, are in the nature of prospective profits or speculative damages, and are so uncertain as to form no legal or equitable basis for finding facts upon which damages can be predicated. Claims of the same nature were made on behalf of the United States before the Tribunal of Arbitration on the Alabama Claims, which met at Geneva in 1872, and in passing upon this class of claims that Tribunal said: "And whereas prospective earnings can not properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies, the Tribunal is unanimously of opinion that there is no ground for awarding to the United States any sum by way of indemnity under this head.[2]

No damages can be awarded for prospective profits.

Decision in Geneva Arbitration.

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[1] W. H. Williams, *post* p. 352.

[2] Papers relating to the Treaty of Washington (Alabama Claims), Congressional publication, Vol. 4, p. 53.

All damages claimed excessive.

It is further insisted, on the part of the United States, that the value of each and all the vessels so seized, mentioned in the schedule of claims, and the detailed accounts in relation thereto, are grossly exaggerated, and that, in fact, the values of these vessels and their respective outfits were far below the amounts stated and claimed; and the damages claimed are in all respects excessive,[1] aside from those which, as stated above, are wholly untenable.

Questions submitted under Article VIII.

The United States do not deem it necessary to state in detail wherein the valuations and damages claimed are excessive and exaggerated, or submit proofs in relation thereto, further than by the analysis of said claims found in the Appendix to this their Counter Case, at page 339, for the reason that the "questions of fact involved in the claim" of either of the parties to the Treaty against the other, to be submitted to the Tribunal of Arbitration under the provisions of Article VIII, should, as this Article is understood by the United States, have relation only to such facts as tend to fix the liability of one party to the other, and do not include facts which only relate to the amounts of such claims.

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[1] Tables showing values of vessels seized, etc., *post* pp. 339–340, Report British Commissioners, pp. 205, 210, and 211.

The Government of the United States, in closing its presentation of the matters in controversy by this reply to the printed Case of Great Britain, reasserts the positions taken in its printed Case and all of the propositions and conclusions contained therein, and is prepared to maintain the same by argument before the Tribunal of Arbitration.

**Reasserts the positions taken in the case.**

JOHN W. FOSTER,
*Agent of the United States.*

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UNITED STATES. No. 8 (1893).

## BEHRING SEA ARBITRATION.

# ARGUMENT

OF

# THE UNITED STATES

BEFORE THE

## TRIBUNAL OF ARBITRATION

CONVENED AT PARIS

UNDER THE

PROVISIONS OF THE TREATY BETWEEN THE UNITED
STATES OF AMERICA AND GREAT BRITAIN,
CONCLUDED FEBRUARY 29, 1892.

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*March* 1893.

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WASHINGTON, *February* 23, 1893.

SIR,

We have the honor to hand you herewith the argument prepared by us as counsel of the United States, in order that in pursuance of Article V of the treaty between the United States and Great Britain, of 29th February, 1892, it may be presented to the Tribunal of Arbitration constituted by that treaty.

Very respectfully, your obedient servants,

E. J. PHELPS.
J. C. CARTER.
H. M. BLODGETT.
F. R. COUDERT.

Hon. JOHN W. FOSTER,
*Agent of the United States.*

# ARGUMENT OF THE UNITED STATES.

The undersigned, counsel for the United States, conceive that before entering upon the argument which it has been made their duty to prepare, they owe more than a formal and ceremonious expression of their sense of the importance and dignity of the occasion and of the august character of the Tribunal which they are to address. Instances have heretofore occurred in which nations have submitted their controversies to peaceful arbitration; but the most important of them have been cases in which mere pecuniary reparation was sought in respect to acts which could not be recalled. To-day two most powerful nations agree that their conflicting claims to permanent dominion shall be reconciled and determined without a resort to those methods of violence which carry with them such limitless destruction and suffering. A just homage is thus paid to the civilized sentiment of mankind that war is seldom, if ever, necessary; and that the conclusions of reason should be made to supersede the employment of force.

## FIRST.

### WHAT LAW IS TO GOVERN THE DECISION?

The undersigned believe it to be in a high degree important that it should at the outset be clearly understood what principles and rules are to guide the Arbitrators in reaching their conclusions. Otherwise no argument can be intelligently framed. We do not indeed apprehend that there can be any serious difference of opinion upon this point.

The consciousness and immediate conviction of every one having any part in the proceeding—Arbitrators and counsel alike—might be safely appealed to for the response that the determination must be grounded upon principles of *right.* It can not be that two great nations have voluntarily waived their own convictions and submitted their rival claims to the determinations of caprice, or merely temporary expediency. It is not to such empty and shifty expedients that national pride and power have paid their homage. The arbitrament of force can be worthily replaced only by that of *right.* This Tribunal would be robbed of its supreme dignity, and its judgment would lose its value, if its deliberations should be swayed in any degree by considerations other than those of justice. Its proceedings would no longer be judicial. The nation for which the undersigned have the honour to be retained is prepared to accept and abide by any determination which this Tribunal may declare as the just conclusion of law upon the facts as established by the proofs. It can not be content with any other.

But what is the rule or principle of *right?* How is it to be described and where is it to be found? The answer to this question, though not so immediately obvious, is yet not open to doubt. In saying that the rule must be that of right, it is intended, and indeed declared, that it must be a *moral* rule, a rule dictated by the moral sense; but this may not be the moral sense as found in any individual mind, or as exhibited by the concurring sentiments of the people of any particular nation. There may be—there are—differences in the moral convictions of the people of different nations, and what is peculiar to one nation can not be asserted as the rule by which the conduct of another nation is to be controlled. The controversy to be determined arises between two different nations, and it has been submitted to the judgment of a tribunal composed, in part, of the citizens of several other nations. It is immediately obvious that it must be adjudged upon principles and rules which both nations and all the Arbitrators alike acknowledge; that is to say, those which are dictated by that *general standard of justice* upon which civilized nations are agreed; and this is *international law.* Just as, in municipal societies, municipal law, aside from legislative enactments, is to be found in the general standard of justice which is acknowledged by the members of each particular state, so, in the larger society of nations, international law is to be found in the general standard of justice acknowledged by the members of that society. There is, indeed, no *legislation,* in the ordinary sense of that word, for the society of nations; nor in respect to, by far, the larger part of the affairs of life is there any for municipal societies; and yet there is for the latter an always existing *law* by which every controversy may be determined. The only difference exhibited by the former is that it has no regularly-constituted body of *experts*, called judges, clothed with authority to declare the law. And this distinction is wiped away in the case of the present controversy by the constitution of this tribunal. That there is an *international law* by which every controversy between nations may be adjudged and determined will scarcely be questioned anywhere; but here no such questioning is allowable. The parties to the controversy are, to employ a word familiar to them, *estopped* from raising it. They have voluntarily made themselves parties to a *judicial* proceeding. For what purpose is it that these nations have submitted rival claims to *judicial* decision if there is no legal rule which governs them? Why is it that they have provided for the selection of arbitrators preëminent for their knowledge of law, except that they intended that the law should determine their rival claims? Nay, what is the relevancy, or utility, of this very argument in which we are engaged unless there is an agreed standard of justice to which counsel can appeal and upon which they can hope to convince? The undersigned conceive that it will not be disputed that this arbitration was planned and must be conducted upon the assumption that there is no place upon the earth, and no transaction either of men or nations which is not subject to the dominion of law.

Nor can there be any substantial difference of opinion concerning the sources to which we are to look for the international standard of justice which the undersigned have referred to as but another name for international law. Municipal and international law flow equally from the same source. All law, whether it be that which governs the conduct of nations, or of individuals, is but a part of the great domain of ethics. It is founded, in each case, upon the nature of man and the environment in which he is placed. The formal rules may indeed be varied according to the different conditions for which they are framed, but the spirit and essence are everywhere and always the same. Says Sir James Mackintosh:

> The science which teaches the rights and duties of men and of states has in modern times been styled "the law of nature and nations." Under this comprehensive title are included the rules of morality, as they prescribe the conduct of private men towards each other in all the various relations of human life; as they regulate both the obedience of citizens to the laws, and the authority of the magistrate in framing laws and administering government; and as they modify the intercourse of independent commonwealths in peace and prescribe limits to their hostility

in war. This important science comprehends only that part of private ethics which is capable of being reduced to fixed and general rules.[1]

And Lord Bacon has, in language often quoted, pointed to the law of nature as the source of all human jurisprudence:

> For there are in nature certain fountains of justice, whence all civil laws are derived but as streams, and like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountain.[2]

This original and universal source of all law is variously designated by different writers; sometimes as "the law of nature," sometimes as "natural justice," sometimes as "the dictates of right reason"; but, however described, the same thing is intended. "The law of nature" is the most approved and widely employed term. The universal obligation which it imposes is declared by Cicero in a passage of lofty eloquence which has been the admiration of jurists in every succeeding age.[3]

And the same doctrine is inculcated by the great teacher of the laws of England in language which may have been borrowed from the great Roman:

> This law of nature being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over the globe, in all countries, and at all times; no human laws are of any validity if contrary to this, and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.[4]

The dependency of all law upon the law of nature is happily expressed by Cicero in another often quoted passage: "*Lex est suprema ratio insita a natura quæ jubet ea quæ facienda sunt, prohibetque con-*

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[1] Dissertation on the Law of Nature and Nations.

[2] De Augmentis Scientiarum.

[3] "Est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium jubendo, vetando a fraude deterreat, quae tamen neque probos frustra jubet aut vetat, nec improbos jubendo aut vetando movet. Huic legi nec obrogari fas est neque derogari ex hac aliquid licet neque tota abrogari potest, nec vero aut per senatum aut per populum solvi hac lege possumus, neque est quaerendus explanator aut interpres ejus alius, nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna et immutabilis continebit unusquisque erit communis quasi magister et imperator omnium deus: ille legis hujus inventor, disceptator, lator, cui qui non parebit, ipse se fugiet ac naturam hominis aspernatus hoc ipso luet maximas poenas, etiam si caetera supplicia quae putantur, effugerit." (De Republica, Lib. III, Cap. XXII, § 33.)

[4] Blackstone, Com., Book I, p. 41.

*traria.*"[1] And it is very clearly illustrated by the fact that the great expositors of the Roman law in seeking for a concise formula which would express its original and fundamental principles, have simply borrowed or framed a statement of the dictates of natural justice: "*Juris precepta sunt hœc: honesta vivere, alterum non lœdere, suum cuique tribuere.*"[2]

Some writers have been inclined to question the propriety of designating as law that body of principles and rules which it is asserted are binding upon nations, for the reason that there is no common superior power which may be appealed to for their enforcement. But this is a superficial view which has received no considerable assent. The public opinion of the civilized world is a power to which all nations are forced to submit. No nation can afford to take up arms in defence of an assertion which is pronounced by that opinion to be erroneous. A recent writer of established authority has well answered this objection:

> It is sometimes said that there can be no law between nations, because they acknowledge no common superior authority, no international executive capable of enforcing the precepts of international law. This objection admits of various answers: First, it is a matter of fact that states and nations recognise the existence and independence of each other, and out of a recognised society of nations, as out of a society of individuals, law must necessarily spring. The common rules of right approved by nations as regulating their intercourse are of themselves, as has been shown, such a law. Secondly, the contrary position confounds two distinct things, namely, the physical sanction which law derives from being enforced by superior power, and the moral sanction conferred on it by the fundamental principle of right; the error is similar in kind to that which has led jurists to divide moral obligations into perfect and imperfect. All moral obligations are eqaully perfect, though the means of compelling their performance is, humanly speaking, more or less perfect, as they more or less fall under the cognizance of human law. In like manner, international justice would not be less deserving of that appellation if the sanctions of it were wholly incapable of being enforced.
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> * * * * * * *
>
> But irrespectively of any such means of enforcement the law must remain. God has willed the society of States as He has willed the society of individuals. The dictates of the conscience of both may be violated on earth, but to the national as to the individual conscience, the language of a profound philosopher is applicable: "Had it strength as it had right, had it power as it has manifest authority, it would absolutely govern the world."
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> * * * * * * *
>
> Lastly, it may be observed on this head, that the history of the world, and especially of modern times, has been but incuriously and unprofitably read by him who has not perceived the certain Nemesis which overtakes the transgressors of international justice; for, to take

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[1] Cic. De Legibus, Lib. I, c. VI, § 6.

[2] Just. I, l. 3.

but one instance, what an "Iliad of woes" did the precedent of the first partition of Poland open to the kingdoms who participated in that grievous infraction of international law! The Roman law nobly expresses a great moral truth in the maxim, "Jurisjurandi contempta religio satis Deum habet ultorem." The commentary of a wise and learned French jurist upon these words is remarkable and may not inaptly close this first part of the work: "Paroles (he says) qu'on peut appliquer également à toute infraction des loix naturelles. La justice de l'Auteur de ces loix n'est pas moins armée contre ceux qui les transgressent que contre les violateurs du serment, qui n'ajoute rien à l'obligation de les observer, ni à la force de nos engagements, et qui ne sert qu'à nous rappeler le souvenir de cette justice inexorable." (Phillimore's International Law, third edition, London, 1879, Vol. I, Section LX.)[1]

That there is a measure of uncertainty concerning the precepts of the law of nature and, consequently, in international, law which is derived from it, is indeed true. This uncertainty in a greater or less degree is found in all the moral sciences. It is exhibited in municipal law, although not to so large an extent as in international law. Law is matter of opinion; and this differs in different countries and in different ages, and indeed between different minds in the same country and at the same time. The loftiest precepts of natural justice taught by the most elevated and refined intelligence of an age may not be acquiesced in or appreciated by the majority of men. It is thus that the rules actually enforced by municipal law often fall short of the highest standard of natural justice. Erroneous decisions in muncipal tribunals are of frequent occurrence. Such decisions, although erroneous, must necessarily be accepted as declarative of the rule of justice. They represent the

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[1] The duties of men, of subjects, of princes, of lawgivers, of magistrates, and of states are all parts of one consistent system of universal morality. Between the most abstract and elementary maxims of moral philosophy and the most complicated controversies of civil and public law there subsists a connection. The principle of justice deeply rooted in the nature and interests of man pervades the whole system and is discoverable in every part of it, even to the minutest ramification in a legal formality or in the construction of an article in a treaty.—(Sir James Macintosh, Discourse on the Law of Nature and Nations, *sub fine*.)

Mr. Justice Story says: "The true foundation on which the administration of international law must rest is that the rules which are to govern are those which arise from mutual interest and utility, from a sense of the inconveniences which would result from a contrary doctrine, and from a sort of moral necessity to do justice in order that justice may be done to us in return." (Conflict of Laws, Ch. ii, Sec. 35.)

And, sitting as a judge, he declared: "But I think it may be unequivocally affirmed that every doctrine that may be fairly deduced by correct reasoning from the rights and duties of nations and the nature of moral obligations may theoretically be said to exist in the law of nations; and, unless it be relaxed or waived by the consent of nations, which may be evidenced by their general practice and custom, it may be enforced by a court of justice wherever it arises in judgment." (La Jeune Eugénie, 2 Mason's Reports, p. 449.)

*national standard of justice* accepted and adopted in states where they are pronounced. So far as they are wrong they will ultimately be corrected as nearer approaches are made to the truth. So also in international law, the actual practice of nations does not always conform to the elevated precepts of the law of nature. In such cases, however, the actual practice must be accepted as the rule. It is this which exhibits what may be called the international standard of justice; that is to say, that standard upon which the nations of the world are agreed. As municipal law embraces so much of natural justice, or the law of nature, as the municipal society recognises and enforces upon its members, so, on the other hand, international law embraces so much of the same law of nature as the society of nations recognizes and enforces upon its members in their relations with each other. The Supreme Court of the United States, speaking through its greatest Chief Justice, was obliged to declare in a celebrated case that slavery, though contrary to the law of nature, was not contrary to the law of nations; and an English judge, no less illustrious, was obliged to make a like declaration.[1] Perhaps the same question would in the present more humane time be otherwise determined.

But, although the actual practice and usages of nations are the best evidence of what is agreed upon as the law of nations, it is not the only evidence. These prove what nations have *in fact* agreed to as binding law. But, in the absence of evidence to the contrary, nations are to be *presumed* to agree upon what natural and universal justice dictates. It is upon the basis of this presumption that municipal law is from time to time developed and enlarged by the decisions of judicial tribunals and jurists which make up the unwritten municipal jurisprudence. Sovereign states are presumed to have sanctioned as law the general principles of justice, and this constitutes the authority of municipal tribunals to declare the law in cases where legislation is silent. They are not to conclude that no law exists in any particular case because it has not been provided for in positive legislation. So also in international law, if a case arises for which the practice and usages of nations have furnished no rule, an international tribunal like the present is not to infer that no rule exists. The consent of nations is to be presumed in favour of the dictates of natural justice, and that source never fails to supply a rule.

If the foregoing observations are well founded, the law by which this

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[1] The Antelope 10, Wheaton's Reports, p. 120; The Louis, 2 Dods, 238.

Tribunal is to be guided is the law of nations; and the sources to which we are to look for that law upon any question which may arise are these:

First. The actual practice and usages of nations. These are to be learned from history in the modes in which their relations and intercourse with one another are conducted; in the acts commonly done by them without objection from other nations; in the treaties which they make with each other, although these are to be viewed with circumspection as being based often upon temporary and shifting considerations, and sometimes exacted by the more powerful from the weaker states; and in their diplomatic correspondence with each other, in which supposed principles of the law of nations are invoked and acceded to.

Second. The judgments of the courts which profess to declare and administer the law of nations, such as prize courts and, in some instances, courts of admiralty, furnish another means of instruction.

Third. Where the above mentioned sources fail to furnish any rule resort is to be had to the great source from which all law flows, the dictates of right reason, natural justice; in other words, the law of nature.

Fourth. And in ascertaining what the law of nature is upon any particular question, the municipal law of States, so far as it speaks with a concurring voice, is a prime fountain of knowledge. This is for the reason that that law involves the law of nature in nearly every conceivable way in which it speaks, and has been so assiduously cultivated by the study of ages that few questions concerning right and justice among men or nations can be found for which it does not furnish a solution.

Fifth. And, finally, in all cases, the concurring authority of jurists of established reputation who have made the law of nature and nations a study is entitled to respect.

Mr. Chief Justice Marshall has expressed from the bench of the Supreme Court of the United States what we conceive to be the true rule. He says:

> The law of nations is the great source from which we derive those rules respecting belligerent and neutral rights which are recognised by all civilized and commercial states throughout Europe and America. This law is in part unwritten, and in part conventional. To ascertain that which is unwritten we recur to the great principles of reason and justice; but as these principles will be differently understood by different nations under different circumstances, we consider them as being, in some degree, rendered fixed and stable by a series of judicial decisions. The decisions of the courts of every country, so far as they are founded upon a law common to every country, will be received

not as authority, but with respect. The decisions of the courts of every country show how the law of nations, in the given case, is understood in that country, and will be considered in adopting the rule which is to prevail in this.[1]

JAMES C. CARTER.

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[1] Sixty Hogsheads of Sugar *v.* Boyle, 9 Cranch, 191, 197.

The views stated in the text concerning the foundation of the law of nations and the sources from which it is to be gathered, are, it is believed, supported by the concurrent voices of writers of established authority. Differences will be found in the modes of statement; but there seems to be no substantial disagreement. A collection of extracts from many writers of different nations will be found in the Appendix immediately following.

# APPENDIX TO PART FIRST (MR. CARTER'S ARGUMENT).

## CITATIONS FROM WRITERS UPON THE LAW OF NATURE AND NATIONS, SHOWING THE FOUNDATION OF INTERNATIONAL LAW, ITS RELATIONS TO THE LAW OF NATURE, AND THE SOURCES FROM WHICH THE KNOWLEDGE OF IT IS TO BE DERIVED.

[POMEROY. Lectures on International Law, ed., 1886, Chap. I, Secs. 29, 30, 31, 33, pages 23-26.]

SEC. 29. (2) A large number of rules which govern the mutual relations of states in their corporate capacity are properly called *international* law, on account of the objects which they subserve and the rights and duties they create. They are also properly *law*, because they have been established by particular states as a part of their own municipal systems, and are enforced by their judiciary and executive in the same manner as other portions of the local codes. They are in fact principles of the law of nature or morality put in the form of human commands, and clothed with a human sanction.

(3) What is called international law in its general sense, I would term international morality. It consists of those rules founded upon justice and equity, and deduced by right reason, according to which independent states are accustomed to regulate their mutual intercourse, and to which they conform their mutual relations. These rules have no binding force in themselves as law; but states are more and more impelled to observe them by a deference to the general public opinion of Christendom, by a conviction that they are right in themselves, or at least expedient, or by a fear of provoking hostilities. This moral sanction is so strong and is so constantly increasing in its power and effect, that we may with propriety say these rules create rights and corresponding duties which belong to and devolve upon independent states in their corporate political capacities.

SEC. 30. We thus reach the conclusion that a large portion of international law is rather a branch of ethics than of positive human jurisprudence. This fact, however, affords no ground for the jurist or the student of jurisprudence to neglect the science. Indeed, there is the greater advantage in its study. Its rules are based upon abstract justice; they are in conformity with the deductions of right reason; having no positive human sanction they appeal to a higher sanction than do the precepts of municipal codes. All these features clothe them with a nobler character than that of the ordinary civil jurisprudence, as God's law is more perfect than human legislation.

SEC. 31. The preceding analysis of the nature and characteristics of international law enables us to answer the general question, What are its sources? If we confine our attention to that portion which is in every sense of the term strictly international, and is therefore, as we have seen, morality rather than law, these sources are plainly seen to be: (1) The Divine law; (2) Enlightened reason acting upon the abstract principles of ethics; and (3) The consent of nations in adopting the particular rules thus drawn from the generalities of the moral law by the aid of right reason. It is only with this portion of international law that we need now concern ourselves. That other portion which I have already described as international only in it objects, and strictly national and municipal in its creation and sanctions, springs from the same sources whence all of the internal law of a particular State arises—from legislatures and the decisions of courts. We will then briefly consider these principal sources, or, if I may use the expression, fountains from which flow the streams of the *jus inter gentes.*

SEC. 33. (2) *Reason.* But the precepts of the moral law, either as contained in the written word, or as felt in the consciousness of the human race, are statements of broad, general principles; they are the germs, the fructifying powers; they must be developed, must be cast in a more practical and dogmatic form to meet the countless demands of each individual, and of the societies we call nations. To this end we may appeal to reason; and hence the second source which I have mentioned, namely, enlightened reason acting upon the abstract principles of morality. I can not now stop to illustrate this proposition; we shall meet many pertinent examples in the course of our investigations. I wish now, however, to dwell upon one fact of great importance—a fact which will help you to avoid many difficulties, to reconcile many discrepancies, to solve many uncertainties. This fact is, that an international law is mainly based upon the general principles of pure morality, and as its particular rules are mainly drawn therefrom, or are intended to be drawn therefrom, by reason, it is, as a science, the most progressive of any department of jurisprudence or legislation. The improvement of civilized nations in culture and refinement, the more complete understanding of rights and duties, the growing appreciation of the truth that what is right is also expedient, have told, and still do tell, upon it with sudden and surprising effect.

The result is that doctrines which were universally received a generation since are as universally rejected now; that precedents which were universally considered as binding a quarter of a century ago would at the present be passed by as without force, as acts which could not endure the light of more modern investigation. More particularly is this true in respect to the rules which define the rights of belligerents and neutrals. The latest works of European jurists are, as we shall see, conceived in a far different spirit from standard treatises of the former generation. It was the entire ignoring or forgetfulness of this evident and most benign fact by Mr. Senator Sumner, in the celebrated and elaborate speech which he delivered a few years since upon the international policy of England, that rendered the speech utterly useless as an argument, exposed it to the criticism of European jurists, and left it only a monument of unnecessary labor in raking up old precedents from history, which no civilized nation of our own day would quote or rely upon.

The Roman law, that wonderful result of reason working upon a basis of abstract right, is largely appealed to in international discussions, as containing rules which, at least by analogy, may serve to settle international disputes. No one can be an accomplished diplomatist without a familiar acquaintance with much of this immortal code.

[Phillimore. International law, 1871, Ch. III, pages 14-28.]

XIX. * * * What are in fact the fountains of international jurisprudence?" * * *

XX. Grotius enumerates these sources as being "*ipsa natura, leges divinæ, mores, et pacta.*"

In 1753 the British Government made an answer to a memorial of the Prussian Government, which was termed by Montesquieu *réponse sans réplique*, and which has been generally recognized as one of the ablest expositions of international law ever embodied in a state paper. In this memorable document "The Law of Nations" is said to be founded upon justice, equity, convenience, and the reason of the thing and confirmed by long usage.

XXI. These two statements may be said to embrace the substance of all that can be said on this subject. * * *

XXII. Modern persons are governed partly by Divine law, * * * which includes natural law—partly, by positive instituted human law. * * *

States, it has been said, are reciprocally recognized as moral persons. States are therefore governed, in their mutual relations, partly by Divine and partly by positive law. Divine law is either (1) that which is written by the finger of God on the heart of man, when it is called natural law; or (2) that which has been miraculously made known to him. * * *

XXIII. The primary source, then, of international jurisprudence is Divine law.

XXVI. * * * Cicero maintains that God has given to all men conscience and intellect; that where these exist, a law exists, of which all men are common subjects. Where there is a *common law*, he argues, there is a *common right*, binding more closely and visibly upon the members of each separate state, but so knitting together the universe, "*ut jam universus hic mundus una civitas sit, communis Deorum atque hominum existimanda.*"

That law, this great jurist says, is immortal and unalterable by prince or people. * * *

XXXI. This would be called by many who have of late years written on the science, international *morality;* they would restrict the term *law* absolutely and entirely to the treaties, the customs, and the practice of nations.

If this were a mere question as to the theoretical arrangement of the subject of international law, it would be of but little importance. * * * But it is of great practical importance to mark the subordination of the law derived from the consent of states to the law derived from God.

XXXII. * * * Another practical consequence is that the law derived from the consent of Christian states is restricted in its operation by the Divine law; and just as it is not morally competent to any individual state to make laws which are at variance with the law of God, whether natural or revealed, so neither is it morally competent to any assemblage of states to make treaties or adopt customs which contravene that law.

Positive law, whether national or international, being only declaratory, may add to, but can not take from, the prohibitions of Divine law. "*Civilis ratio civilia quidem jura corrumpere potest, naturalia non utique,*" is the language of Roman law; and is in harmony with the voice of international jurisprudence as uttered by Wolff: "*Absit vero, ut existimes, jus gentium voluntarium ab earum voluntate ita profisci, ut libera sit earum in eodem codendo voluntas, et stet pro ratione sola voluntas, nulla habita ratione juris naturalis.*"

XXXIII. This branch of the subject may be well concluded by the invocation of some high authorities from the jurisprudence of all countries in support of the foregoing opinion.

Grotius says emphatically: "*Nimirum humana jura* MULTA *constituere possunt* PRÆTER *naturam*, CONTRA nihil."

John Voet speaks with great energy to the same effect: "*Quod si contra rectæ rationis dictamen gentes* USU *quædam introduxerint*, NON *ea jus gentium rectè dixeris*, SED PESSIMAM POTIUS MORUM HUMANI GENERIS CORRUPTELAM."

Suarez, who has discussed the phiolosphy of law in a chapter which contains the germ of most that has been written upon the subject, says: "*Leges autem ad jus gentium pertinentes veræ leges sunt, ut explicatum manet, propinquiores sunt legi naturali quam leges civiles, ideoque impossible est esse contrarias æquitati naturali.*"

Wolff, speaking of his own time, says: "*Omnium ferè animos occupavit perversa illa opinio* QUASI FONS JURIS GENTIUM SIT UTILITAS PROPRIA; *unde contingit id potentiæ coæquari. Damnamus hoc in privatis, damnamus in rectore civitatis; sed* ÆQUE IDEM DAMNANDUM EST IN GENTIBUS."

Mackintosh nobly sums up this great argument: "The duties of men, of subjects, of princes, of lawgivers, of magistrates, and of *states*, are all parts of one consistent system of universal morality. Between the most abstract and elementary maxim of moral philosophy, and the most complicated controversies of civil or public law, there subsists a connection. The principle of justice, deeply rooted in the nature and interest of man, pervades the whole system, and is discoverable in every part of it, even to its minutest ramification in a legal formality, or in the construction of an article in a treaty."

[Henry Sumner Maine, International Law, pages 13–47.]

In modern days the name of International Law has been very much confined to rules laid down by one particular class of writers. They may be roughly said to begin in the first half of the seventeenth century, and to run three parts through the eighteenth century. The names which most of us know are, first of all that of the great Hugo Grotius, followed by Puffendorf, Leibnitz, Zouch, Selden, Wolf, Bynkershoek, and Vattel. The list does not absolutely begin with Grotius, nor does it exactly end with Vattel, and indeed, as regards the hither end of this series the assumption is still made, and I think not quite fortunately, that the race of law-creating jurists still exists. * * * Their [the writers named and a few others] system is that conventionally known as International Law.

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A great part, then, of International Law is Roman law spread over Europe by a process exceedingly like that which a few centuries earlier had caused other portions of Roman law to filter into the interstices of every European legal system. The Roman element in International Law belonged, however, to one special province of the Roman system, that which the Romans themselves called natural law, or by an alternative name, Jus Gentium. In a book published some years ago on "Ancient Law" I made this remark: "Setting aside the Treaty Law of Nations, it is surprising how large a part of the system is made up of pure Roman law. Wherever there is a doctrine of the Roman jurisconsults affirmed by them to be in harmony with the Jus Gentium, the Publicists have found a reason for borrowing it, however plainly it may bear the mark of a distinctive Roman origin." * * *

Seen in the light of a stoical doctrine the law of nations came to be identified with the law of nature; that is to say, with a number of supposed principles of conduct which man in society obeys simply because he is man. Thus the law of nature is simply the law of nations seen in the light of a peculiar theory. A passage in the Roman institutes shows that the expressions were practically convertible. The greatest function of the law of nature was discharged in giving birth to modern international law. * * *

The impression that the Roman law sustained a system of what would now be called international law, and that this system was identical with the law of nature had undoubtedly much influence in causing the rules of what the Romans called natural law to be engrafted on, and identified with, the modern law of nations (page 28).

It is only necessary to look at the earliest authorities on international law, in the "De Jure Belli et Pacis" of Grotius for example, to see that the law of nations is essentially a moral and, to some extent, a religious system. The appeal of Grotius is almost as frequent to morals and religion as to precedent, and no doubt it is these portions of the book * * * which gained for it much of the authority which it ultimately obtained. (Page 47.)

[From Wheaton, International Law, Part I, Ch. I, secs. 4, 14.]

The principles and details of international morality, as distinguished from international law, are to be obtained not by applying to nations the rules which ought to govern the conduct of individuals, but by ascertaining what are the rules of international conduct which, on the whole, best promote the general happiness of mankind.

International law, as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent.

[Kent's Commentaries, Part I, Lect. 1, pages 2-4.]

* * * The most useful and practical part of the law of nations is, no doubt, instituted or positive law, founded on usage, consent, and agreement. But it would be improper to separate this law entirely from natural jurisprudence and not to consider it as deriving much of its force and dignity from the same principles of right reason, the same views of the nature and constitution of man, and the same sanction of divine revelation, as those from which the science of morality is deduced. There is a natural and a positive law of nations. By the former every state, in its relations with other states, is bound to conduct itself with justice, good faith, and benevolence; and this application of the law of nature has been called by Vattel the necessary law of nations, because nations are bound by the law of nature to observe it; and it is termed by others the internal law of nations, because it is obligatory upon them in point of conscience.

We ought not, therefore, to separate the science of public law from that of ethics, nor encourage the dangerous suggestion that governments are not so strictly bound by the obligations of truth, justice, and humanity, in relation to other powers, as they are in the management of their own local concerns. States or bodies politic are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life. The law of nations is a complex system, composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government of individuals in a state of natural equality and to the relations and conduct of nations; of a collection of usages, customs, and opinions, the growth of civilization and commerce, and of a code of conventional or positive law.

In the absence of these latter regulations, the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations and the nature of moral obligation; and we have the authority of the lawyers of antiquity and of some of the first masters in the modern school of public law, for placing the moral obligation of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science.

The law of nations, so far as it is founded on the principles of natural law, is equally binding in every age and upon all mankind. * * *

[Halleck, International Law, Ch. II, sec. 13, page 50,.and sec. 18, page 54.]

SEC. 13. It is admitted by all that there is no universal or immutable law of nations, binding upon the whole human race, which all mankind in all ages and countries have recognized and obeyed. Nevertheless, there are certain principles of action, a certain distinction between right and wrong, between justice and injustice, a certain divine or natural law, or rule of right reason, which, in the words of Cicero, "is congenial to the feelings of nature, diffused among all men, uniform, eternal, commanding us to our duty, and prohibiting every violation of it; one eternal and immortal law, which can neither be repealed nor derogated from, addressing itself to all nations and all ages, deriving its authority from the common Sovereign of the universe, seeking no other lawgiver and interpreter, carrying home its sanctions to every breast, by the inevitable punishment He inflicts on its transgressors."

It is to these principles or rule of right, reason, or natural law, that all other laws, whether founded on custom or treaty, must be referred, and their binding force determined. If, in accordance with the spirit of this natural law, or if innocent in themselves, they are binding upon all who have adopted them; but if they are in violation of this law, and are unjust in their nature and effects,they are without force. The principles of natural justice, applied to the conduct of states, considered as moral beings, must therefore constitute the foundation upon which the customs, usages, and conventions of civilized and christian nations are erected into a grand and lofty temple. The character and durability of the structure must depend upon the skill of the architect and the nature of the materials; but the foundation is as broad as the principles of justice, and as immutable as the law of God.

SEC. 18. The first source from which are deduced the rules of conduct which ought to be observed between nations, is the *divine law*, or principle of justice, which has been defined "a constant and perpetual disposition to render every man his due." The peculiar nature of the society existing among independent states, renders it more difficult to apply this principle to them than to individual members of the same state; and there is, therefore, less uniformity of opinion with respect to the rules of international law properly deducible from it, than with respect to the rules of moral law governing the intercourse of individual men. It is, perhaps, more properly speaking, the test by which the rules of positive international law are to be judged, rather than the source from which these rules themselves are deduced. (Justinian, Institutes, lib. 1, tit. 1; Phillimore, On Int. Law, Vol. I, sec. 23; Dymond, Prin. of Morality, Essay 1, pt. 2, ch. 4; Manning, Law of Nations, pp. 57-58; Cotelle, Droit des Gens, pt. 1; Heineccius, Elementa Juris Nat. et Gent., lib. 1, cap. 1, sec 12.)

[Woolsey: Introduction International Law, ed. 1892, sec. 15, page 14.]

SEC. 15. * * * But what are the rational and moral grounds of international law? As we have seen, they are the same in general with those on which the rights and obligations of individuals in the state and of the single state towards the individuals of which it consists, repose. If we define natural *jus* to be the science which from the nature and destination of man determines his external relations in society, both the question, What ought to be the rights and obligations of the individual in the state? and the question, What those of a state among states ought to be? fall within this branch of science. That there are such rights and obligations of *states* will hardly be doubted by those who admit that these relations of natural justice exist in any case. There is the same reason why they should be applied in regulating the intercourse of states as in regulating that of individuals.

There is a natural destination of states, and a divine purpose in their existence, which makes it necessary that they should have certain functions and powers of acting within a certain sphere, which external force may not invade. It would be strange if the state, that power which defines rights and makes them real, which creates *moral persons* or associations with rights and obligations, should have no such relations of its own—should be a physical and not a moral entity. In fact, to take the opposite ground would be to maintain that there is no right and wrong in the intercourse of states, and to leave their conduct to the sway of mere convenience.

[Wolff, quoted by Vattel, preface to seventh American ed., page 9.]

Nations do not, in their mutual relations to each other, acknowledge any other law than that which nature herself has established. Perhaps, therefore, it may appear superfluous to give a treatise on the law of nations as distinct from the law of nature. But those who entertain this idea have not sufficiently studied the subject. Nations, it is true, can only be considered as so many individual persons living together in the state of nature; and, for that reason, we must apply to them all the duties and rights which nature prescribes and attributes to men in general, as being naturally born free, and bound to each other by no ties but those of nature alone. The law which arises from this application, and the obligations resulting from it, proceed from that immutable law founded on the nature of man; and thus the law of nations certainly belongs to the law of nature; it is, therefore, on account of its origin, called the *natural*, and, by reason of its obligatory force, the *necessary*, law of nations. That law is common to all nations; and if any one of them does not respect it in her actions, she violates the common rights of all the others.

But nations or sovereign States being moral persons and the subjects of the obligations and rights resulting, in virtue of the law of nature, from the act of association which has formed the political body, the nature and essence of these moral persons necessarily differ, in many respects, from the nature and essence of the physical individuals, or men, of whom they are composed. When, therefore, we would apply to nations the duties which the law of nature prescribes to individual man, and the rights it confers on him in order to enable him to fulfil his duties, since those rights and those duties can be no other than what are consistent with the nature of their subjects, they must, in their application, necessarily undergo a change suitable to the new subjects to which they are applied. Thus, we see that the law of nations does not, in every particular, remain the same as the law of nature, regulating the actions of individuals. Why may it not, therefore, be separately treated of as a law peculiar to nations?

[From "Des Droits et des Devoirs des Nations Neutres en Temps de Guerre Maritime," par L. B. Hautefeuille, 1848, Vol. I, pages 46, 12 *et seq.* Translation.]

He (God) has given to nations and to those who govern them a law which they are to observe towards each other, an unwritten law, it is true, but a law which he has taken care to engrave in indelible characters in the heart of every man, a law which causes every human being to distinguish what is true from what is false, what is just from what is unjust, and what is beautiful from what is not beautiful. It is the divine or natural law; it constitutes what I shall call primitive law.

This law is the only basis and the only source of international law. By going back to it, and by carefully studying it, we may succeed in retracing the rights of nations with accuracy. Every other way leads infallibly to error, to grave, nay, deplorable error, since its immediate result is to blind nations and their rulers, to lead them to misunderstand their duties, to violate them, and too often to shed torrents of human blood in order to uphold unjust pretensions. The divine law is not written, it has never been formulated in any human language, it has never been promulgated by any legislator; in fact, this has never been possible, because such legislator, being man and belonging to a nation, was from that very fact without any authority over other nations, and had no power to dictate laws to them.

This lack of a positive text has led some publicists to deny the existence of the natural law, and to reject its application. They have based their action in so doing more particularly upon the different way in which each individual interprets that law, according as his organization is more or less perfect, more or less powerful, if I may thus express myself; hence, it results that this law is different for each individual and for each nation, that is to say, that it does not exist. One of these writers, in support of his denial of the natural law, lays down the principle that man brings nothing with him into this world except feelings of pain or pleasure, and inclinations that seek to be satisfied, which can never be entitled to the name of laws, since they vary according to the organization of each individual, because they are by no means the same among all nations and in all climates.[1]

These opinions would perhaps have some appearance of reason if the natural law were represented as a written system of legislation, or as a complete code similar to those which govern human society and the members who compose it. Then it might be said with Moser: "What is this law which is so much talked about? Must we seek its principles in Grotius or Hobbes?"[1]

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[1] What is natural in man is his feelings of pain or pleasure, his inclinations; but to call these feelings and inclinations laws, is to introduce a false and dangerous view and to put language in contradiction with itself, for laws must be made for the very purpose of repressing these inclinations. * * * (Jeremy Bentham, False Manner of Reasoning in Matters of Legislation.)

Some one might ask to see that code which is destined to prevent all wars by foreseeing and condemning all unjust claims in advance. It is not thus, however, that the natural law is presented by those authors who have taken its teachings as the basis of their writings; they have never sought to give it a body or to put it in the form of a written law. What is true, and, in my opinion, incontestable, is that notions of what is just and what is unjust are found in all men; it is that all individuals of the human race that are in the enjoyment of reason have these notions graven upon their hearts, and that they bring with them into the world when they are born. These notions do not extend to all the details of law as do civil laws, but they have reference to all the most prominent points of law, if I may thus express myself.

It can not be denied that the idea of property is a natural and innate idea. The same is the case with the idea which impels every individual to exercise care for his own preservation with that which forbids men to enrich themselves at the expense of others; which imposes the obligation to repair a wrong done to one's fellow man, to perform a promise made, etc., etc. These first and innate notions, which every man brings with him into the world when he is born, are the precepts of the natural law; and human laws are all the more perfect the nearer they approach to these divine precepts. The natural or divine law is the only one that can be applied among nations—among beings free from every bond and having no interest in common.

From these general rules of divine law it is easy to form secondary laws having for their object the settlement of all questions that can arise among all the peoples of the universe. To cite but a single example, it is evident that from the principle of the law emanating from God, that every nation is free and independent of every other nation (which principle is recognized by all men), this consequence results, which is necessary and absolute, as is the principle itself, viz.: That every nation may freely exchange its superfluous possessions, trade with whomsoever it may choose to seek in order to make such exchange and to carry on such trade, without being under any necessity of applying for the permission of a third nation. The only condition that it must fulfil is that it must obtain the consent of the other party to the contract. It need not trouble itself about the annoyance that such exchange may cause a third nation, provided such trade does not interfere with the positive and natural rights of such nation.

This second rule gives rise to several others which are as clear and absolute as it is itself. In a word, all international law is the outgrowth of natural and primitive law. Viewed in this light, it seems to me impossible to dispute the existence of the primitive law; it is a kind of mathematical truth, and I do not fear to reply to Moser; the principles of this law are not only in Grotius and Hobbes, but they are in the hearts of all men, they are in the heart of you who ask where they are found.

International law is, therefore, based upon the divine and primitive law; it is all derived from this source. By the aid of this single law, I firmly believe that it is not only possible, but even easy, to regulate all relations that exist or may exist among the nations of the universe. This common and positive law contains all the rules of justice; it exists independently of all legislation of all human institutions, and it is one for all nations. It governs peace and war, and traces the rights and duties of every position. The rights which it gives are clear, positive, and absolute; they are of such a nature as to reciprocally limit each other without ever coming into collision or contradiction with each other; they are correlative to each other, and are coordinated and linked with the most perfect harmony. It can not be otherwise. He who has arranged all the parts of the universe in so admirable a manner, the Creator of the world, could not contradict himself.

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[1] (Moser, "Essai sur le droit des gens des plus modernes des nations européennes en paix et en guerre, 1778–1780.")

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The natural law is, from its very nature, always obligatory. The treaties which recall its provisions and regulate their application must necessarily have the same perpetuity, since, even if they should cease to exist, the principles would not cease to be executory just as they were when the stipulations were in force. * * *

Certain usages have become established among civilized nations without ever having been written in any treaty, and without ever having formed the subject of any special and express agreement. These usages, few in number, in harmony with primitive law, whose application they serve to regulate, form a part of international law which might be called the law of custom; it seems to me preferable to consider them as a part of secondary law.

[From "Le Droit de la Nature et des Gens," par le Baron de Pufendorf, traduit du Latin par Jean Barbeyrac. 5th ed., Vol. I, Book 2, Chap. 3, sec. 23, pages 243 *et seq.* Translation.]

Finally, we must further examine here, whether there is a positive law of nations, different from the natural law. Learned men are not well agreed on this subject. Many think that the natural law and the law of nations are, in point of fact, but one and the same thing, and that they differ in name only. Thus, Hobbes divides the natural law into natural law of man and natural law of states. The latter, in his opinion, is what is called the law of nations. "The maxims," adds he, "of both these laws are precisely the same; but as states, as soon as they are found, acquire, to a certain extent, personal characteristics, the same law that is called natural, when the duties of private individuals are mentioned, is called the law of nations when reference is made to the whole body of a state or nation."

I fully subscribe to this view, and I recognize no other kind of voluntary or positive international law, at least none having force of law, properly so called, and binding upon nations as emanating from a superior. There is, in fact, no variance between our opinion and that of certain learned men who regard that which is in harmony with a reasonable nature as belonging to natural law, and that which is based upon our needs, which can not be better provided for than by the laws of sociability, as belonging to the law of nations. For we maintain simply that there is no positive law of nations that is dependent upon the will of a superior. And that which is a consequence of the needs of human nature should, in my opinion, be referred to the natural law. If we have not thought proper to base this law upon the agreement of the things which are its object, with a reasonable nature, this was in order not to establish in reason itself the rule of the maxims of reason, and to avoid the circle to which is reduced the demonstration of the natural laws by this method.

Moreover, the majority of the things which the Roman jurisconsults and the great body of learned men refer to the law of nations, such as the different kinds of acquisition, contracts, and other similar things, either belong to the natural law or form part of the civil law of every nation. And, although in regard to those things which are not based upon the universal constitution of the human race, the laws are the same among the majority of the nations, no particular kind of law results from this, for it is not in virtue of any agreement or of any mutual obligation that these laws are common to several peoples, but purely and simply from an effect of the particular will of the legislators of each State, who have by chance agreed in ordering or forbidding the same things. Hence it is that a single people can change these laws of its own accord without consulting others, as has frequently been done.

We must not, however, absolutely reject the opinion of a modern writer who claims that the Roman jurisconsults understand by law of nations that law which concerns those acts which foreigners could perform, and the business which they could validly transact in the states belonging to the Roman people, in contrast with the civil law that was particular to Roman citizens. Hence it was that wills and marriages, which were valid among citizens only were referred to civil law while contracts were considered as coming under the law of nations, because foreigners could make them with citizens in such a manner that they were valid before the Roman courts of justice. Many also apply the name law of nations to certain customs, especially in matters relating to war, which are usually practiced by a kind of tacit consent, among the majority of nations, at least among those that pride themselves on having some courtesy and humanity.

In fact, inasmuch as civilized nations have attached the highest glory to distinction in war; that is to say, to daring and knowing how skillfully to cause the death of a large number of persons, which has in all ages given rise to many unnecessary or even unjust wars, conquerors, in order not to render themselves wholly odious by their ambition, have thought proper, while claiming every right that one has in a just war—have thought proper, I say, to mitigate the horrors of war and of military expeditions by some appearance of humanity and magnanimity. Hence the usage of sparing certain kinds of things and certain classes of persons, of observing some moderation in acts of hostility, of treating prisoners in a certain way, and other similar things. Yet while such customs seem to involve some obligation, based at least upon a tacit agreement, if a prince in a just war fails to observe them, provided that by taking an opposite course he does not violate natural law, he can be accused of nothing more than a kind of discourtesy, in that he has not observed the received usage of those who regard war as being one of the liberal arts; just as among fencing masters, one who has not wounded his man according to the rules of art is regarded as an ignorant person.

Thus, so long as none but just wars are carried on, the maxims of natural law alone may be consulted, and all the customs of other nations may be set at naught unless one is interested in conforming thereto, so as to induce the enemy to perform less rigorous acts of hostility against us and against our party. Those, however, who undertake an unjust war, do well to follow these customs, so as to maintain at least some moderation in their injustice. As, however, these are not reasons that are generally to be considered, they can constitute no universal law, obligatory upon all nations; especially since in all things that are only based upon tacit consent anyone may decline to be bound by them by expressly declaring that he will not be so bound, and that he is willing that others should not be thereby bound in their dealings with him.

We observe that not a few of these customs have, in course of time been abolished, and that in some cases directly opposite customs have been introduced.

In vain has a certain writer impugned our opinions as if it were subversive of the foundations of the safety, advantage, and welfare of nations; for all that is not dependent upon the customs just referred to, but upon the observance of the natural law, which is a much more solid principle and one deserving of much greater respect. If its rules are carefully observed, mankind will not have much need of these customs. Moreover, by basing a custom upon the maxims of natural law, a much more noble origin is given it and also much greater authority than if it were made to depend upon a mere agreement among nations.

[Ortolan. International Rules and Diplomacy of the Sea. Paris, 1864, Vol. I, Book 1, Chap. 4, page 71. Translation.]

It is apparent that nations not having any common legislator over them have frequently no other recourse for determining their respective rights but to that reasonable sentiment of right and wrong, but to those moral truths already brought to light and to those which are still to be demonstrated. This is what is meant when it is said that natural law is the first basis of international law. This is why it is important that Governments, diplomats, and publicists that act, negotiate, or write upon such matters should have deeply (rooted) in themselves this sentiment of right and of wrong which we have just defined, as well as the knowledge of the point of certainty (point de certitude) where the human mind has been able to attain this order of truths.

But nations are not reduced only to that light, too often uncertain of human reason, for defining their reciprocal rights. Experience, imitation of accomplished precedents, and long practical usage habitually and generally observed add to it what is termed a *custom* which forms the rule of international conduct and from which flows on one or the other side positive rights (adroits). The binding force of custom is founded on consent, the tacit agreement, of nations. Nations have thus tacitly agreed among themselves, and they have bound themselves through this tacit agreement, for the reaon that they have practised it so long and so generally.

The supremacy of custom is much more frequently exercised and much more extensive in international law than in private law; precisely because in international law there is no common legislator to restrain such supremacy by formulating the rule of conduct in writing. Custom is often conformable to the light of reason upon that which is right or wrong because it emanates from communities or collections of reasonable beings; but frequently also it is contrary to it, because the reason of man, individual or collective, is subject to error; finally, it tends more and more intimately to approach it, because the path of man, an essentially perfectible being, is a path of improvement and progress.

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It must be stated that treaties, far from justifying the exclusion of moral truths of what is right or wrong, among nations, which one wishes to deduce from them, precisely only obtain their binding force but from one or the other of those truths. It is because the natural sentiment of right dictates to all that a regular agreement of independent wills between qualified persons on allowable subjects and cases binds the contracting parties to each other, it is therefore that treaties are recognized as obligatory. They only draw, therefore, their fundamental authority except from natural law, employing for an instant this term, the sense of which we have before explained. And it is also from natural law that is generally deduced the idea of the necessary conditions to establish the validity of treaties, and that of the legitimate consequences ensuing from their violation.

[From "A Methodical System of Universal Law," by J. G. Heineccius (Turnbull's Translation), Vol. I, ed. 1763.]

Sec. XII, page 8: The law of nature, or the natural rule of rectitude, is a system of law promulgated by the eternal God to the whole human race by reason. But if you would rather consider it as a science, natural morality will be rightly defined the practical habit of discovering the will of the supreme legislator by reason, and of applying it as a rule to every particular case that occurs. Now, because it consists in deducing and applying a rule coming from God, it may be justly called *divine jurisprudence.*

Sec. XXI, page 14: *Since the law of nature comprehends all the laws promulgated to mankind by right reason; and men may be considered either as particulars singly, or as they are united in certain political bodies or societies; we call that *law*, by which the actions of particulars ought to be governed, *the law of nature*, and we call that *the law of nations*, which determines what is just and unjust in society or between societies. And therefore the precepts, or the laws of both are the same; nay, the *law of nations*, is the law of nature itself, respecting or applied to social life and the affairs of societies and independent states.

Sec. XXII, page 15: Hence we may infer, that the law of nature doth not differ from the law of nations, neither in respect of its foundation and first principles, nor of its rules, but solely with respect to its object. Wherefore their opinion is groundless, who speak of, I know not what, law of nations distinct from the law of nature. The positive or secondary law of nations devised by certain ancients, does not properly belong to that law of nations we are now to treat of, because it is neither established by God, nor promulgated by right reason; it is neither common to all mankind nor unchangeable.

[From Vattel on the Law of Nations, seventh American ed., 1849.]

There certainly exists a natural law of nations since the obligations of the law of nature are no less binding on states, on men united in political society, than on individuals. But, to acquire an exact knowledge of that law it is not sufficient to know what the law of nature prescribes to the individuals of the human race. The application of a rule to various subjects, can no otherwise be made than in a manner agreeable to the nature of each subject. Hence, it follows, that the natural law of nations is a particular science, consisting in a just and rational application of the law of nature to the affairs and conduct of nations or sovereigns. (Preface, page v.)

The moderns are generally agreed in restricting the appellation of "The Law of Nations" to that system of right and justice which ought to prevail between nations or sovereign states. (Preface, page vi.)

The necessary and the voluntary law of nations are therefore both established by nature, but each in a different manner; the former as a sacred law which nations and sovereigns are bound to respect and follow in all their actions; the latter, as a rule which the general welfare and safety oblige them to admit in their transactions with each other. The necessary law immediately proceeds from nature; and that common mother of mankind recommends the observance of the voluntary law of nations, in consideration of the state in which nations stand with respect to each other, and for the advantage of their affairs. (Preface, page XIII.)

As men are subject to the law of nature—and as their union in civil society can not have exempted them from the obligation to observe those laws, since by that union they do not cease to be men, the entire nation, whose common will is but the result of the united wills of the citizens, remains subject to the *laws of nature*, and is bound to respect them in all her proceedings. (Page LVI, sec. 5.)

"We must, therefore, apply to nations the rules of the law of nature, in order to discover what their obligations are, and what their rights: consequently, the *law of nations* is originally no other than the *law of nature applied* to nations." (Page LVI, sec. 6.)

[From G. F. von Martens, Law of Nations, page 2 of Introduction. (German.) Translated by William Cobbet, 4th ed., 1829.]

The second sort of obligations are those which exist between nations. Each nation being considered as a moral being, living in a state of nature, the obligations of one nation towards another are no more than those of individuals, modified and applied to nations; and this is what is called the *natural law of nations*. It is *universal* and *necessary*, because all nations are governed by it, even against their will. This law, according to the distinction between perfect and imperfect, is perfect and external (the law of nations, strictly speaking), or else imperfect and internal, by which last is understood the morality of nations.

[SEC. 2 of the Positive Law of Nations.]

It is hardly possible that the simple law of nature should be sufficient even between individuals, and still less between nations, when they come to frequent and carry on commerce with each other. Their common interest obliges them to soften the rigor of the law of nature, to render it more determinate, and to depart from that perfect equality of rights, which must ever, according to the law of nature, be considered as extending itself even to the weakest. These changes take place in virtue of conventions (express or tacit) or of simple custom. The whole of the rights and obligations, thus established between two nations, form the positive law of nations between them. It is called *positive*, particular, or arbitrary, in opposition to the natural, universal, and necessary law.

[From Jan Helenus Ferguson, Dutch, but apparently written in English, "Manual of International Law" (1884), Vol. I, Part I, Ch. III, sec. 21, page 66.]

International law, being based on international morality, depends upon the state of progress made in civilization. Hence arises the difficulty of giving an all-comprehending definition to international law. What *ought* to be permanently understood among civilized nations as the main principles and the basis of their mutual intercourse, we have noted already to be the moral law of nature. But we have also seen that the spirit of law is the practical medium through which this general law influences humanity at all the stages of progress on the road to civilization.

Investigating thus this spirit of law, we find the definition of international law to consist in *certain rules of conduct which reason, prompted by conscience, deduces as consonant to justice, with such limitations and modifications as may be established by general consent, to meet the exigencies of the present state of society as existing among nations and which modern civilized states regard as binding them in their relations with one another, with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country.*

[From "Le Droit Public International Maritime," par Carlos Testa (Portuguese), translated by H. Boutiron, 1886, Part I, Chap. 1, page 46 *et seq.*]

Force may constitute, in physical matters, the superiority of one individual over another; but reason and conscience establish, in moral matters, other means which are controlled by the notion of duty and right. It is the whole body of these precepts, which are just, necessary, and immutable, for every reasoning being, and graven by God in the human conscience, that constitutes the natural or primitive law. The object of a law regulating the conduct of men is to impose moral obligations or to authorize certain acts from which advantages may result.

In the former case the law establishes the duty; in the latter it considers the right. The natural or primitive law, when it designates the duties that it imposes, at once establishes the correlative duties which are its outgrowth, and which constitute the principles of natural or primitive law.

The science of natural law is therefore based upon the principles of that intuitive law which, while giving the ability to practice that which is morally just, establishes the principles to be observed in the relations between one individual and another for the different hypotheses of social life.

Duty is a matter of precept, while right is optional; yet right and duty are essentially correlative; and in the reciprocal relations between one individual and another, that which constitutes a duty for one, establishes a right for another. The same is the case in the mutual relations of collective bodies.

It is an axiom which results from the study of the moral nature of man that alone and isolated he cannot attain his welfare, and that sociability is a condition which is by nature necessary to enable him to attain his highest advantage. This natural cause has produced the family, a social element which determines the formation of nations.

Now, natural law, which is essentially connected with human nature, and which prescribes certain principles that are to control the reciprocal relations between one individual and another, is likewise and for the same reason applicable to the relations existing among collective bodies of individuals, which constitute so many moral entities. It is, therefore, the common law of association—that is to say, of nationalities.

This application of the precepts of natural law, which obliges nations to practice the same duties that it prescribes for individuals, constitutes the law of nations, which, when considered according to its origin (which is based upon natural law), is also called the primitive or necessary law of nations.

Respect for the law of nations is consequently as obligatory among nations as is respect for natural law among individuals.

From the fact that the various civil societies which form nations or states, are independent, it results that the internal laws which constitute the public law of some can not be extended to the others—that is to say, the internal public law of each nation or state can not be regarded as an external and absolute law, to which others must submit.

Hence it results that, in order to fix the limits at which the law of nations stops, it is absolutely necessary to have resource to the various elements that can give it birth. These elements are:

1. The general principles of natural law, constituting the primitive law which is the outgrowth of the presumable consent of nations;
2. The law of custom, constituting the secondary law that emanates from tacit consent;
3. Conventional law, likewise constituting the secondary law which arises from expressed consent.

The origins of international law are therefore three in number:

1. The reason and the conscience of what is just and unjust, independent of any prescription;
2. Custom;
3. Public treaties.

The principles, practices, and usages of the law of nations, in accordance with these limits, regulate the conduct of nations, and it is for this reason that in their generality they constitute international law.

Conventional law may abrogate the law of custom, but it loses its character as a law if it establishes provisions at variance with natural law.

Although in the philosophical order natural law occupies the first place, yet in the practical order of external relations, when questions are to be decided or negotiations conducted, its rank is no longer the same; in these cases the obligations contracted in the name of conventional law, in virtue of existing treaties, are considered in the first place. If such treaties are lacking, the law of custom establishes the rule; and when there are neither treaties to invoke nor customs to follow, it is usual to proceed in accordance with what reason establishes as just, and with the simple principle of natural law.

When external public law derives its origin from the law of convention and custom, it constitutes what publicists designate as positive or secondary international law; when it is derived merely from the principles of natural law, it is called the primitive law of nations.

[From Burlamaqui "The Principles of Natural and Politic Law." Translated by Nugent, 1823, Part II, Chap. 6, pages 135, 136.]

IV. All societies are formed by the concurrence or union of the wills of several persons with a view of acquiring some advantage. Hence it is that societies are considered as bodies, and receive the appellation of moral persons. * * *

V. This being supposed, the establishment of states introduces a kind of society amongst them, similar to that which is naturally between men; and the same reasons which induce men to maintain union among themselves, ought likewise to engage nations or their sovereigns to keep up a good understanding with one another.

It is necessary, therefore, there should be some law among nations to serve as a rule for mutual commerce. Now this law can be nothing else but the law of nature itself, which is then distinguished by the name of the law of nations. *Natural law*, says Hobbes, very justly (De Cive, cap. 14, sec. 4), *is divided into the natural law of man and the natural law of states; and the latter is what we call law of nations.* Thus natural law and the law of nations are in reality one and the same thing, and differ only by an external denomination. We must therefore say that the law of nations, properly so called, and considered as a law proceeding from a superior, is nothing else but the law of nature itself, not applied to men, considered simply as such, but to nations, States, or their chiefs, in the relations they have together, and the several interests they have to manage between each other.

VI. There is no room to question the reality and certainty of such a law of nations obligatory of its own nature, and to which nations, or the sovereigns that rule them, ought to submit. For if God by means of right reason imposes certain duties between individuals, it is evident he is likewise willing that nations, which are only human societies, should observe the same duties between themselves. (See ch. v, sec. 8.)

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SEC. IX. * * * There is certainly an universal, necessary, and self-obligatory law of nations, which differs in nothing from the law of nature, and is consequently immutable, insomuch that the people or sovereigns can not dispense with it, even by common consent, without transgressing their duty. There is, besides, another law of nations which we may call arbitrary and free, as founded only on an express or tacit convention, the effect of which is not of itself universal, being obligatory only in regard to those who have voluntarily submitted thereto, and only so long as they please, because they are always at liberty to change or repeal it. To this we must likewise add that the whole force of this sort of law of nations ultimately depends on the law of nature, which commands us to be true to our engagements. Whatever really belongs to the law of nations may be reduced to one or other of these two species; and the use of this distinction will easily appear by applying it to particular questions which relate either to war, for example, to ambassadors, or to public treaties, and to the deciding of disputes which sometimes arise concerning these matters between sovereigns.

SEC. X. It is a point of importance to attend to the origin and nature of the law of nations, such as we have now explained them. For, besides that it is always advantageous to form just ideas of things, this is still more necessary in matter of practice and morality. It is owing perhaps to our distinguishing the law of nations from natural law, that we have insensibly accustomed ourselves to form quite a different judgment between the actions of sovereigns and those of private people. Nothing is more usual than to see men condemned in common for things which we praise, or at least excuse in the persons of princes. And yet it is certain as we have already shown, that the maxims of the law of nations have an equal authority with those of the law of nature, and are equally respectable and sacred, because they have God alike for their author. In short, there is only one sole and the same rule of justice for all mankind. Princes who infringe the law of nations commit as great a crime as private people who violate the law of nature; and if there be any difference in the two cases, it must be charged to the prince's account, whose unjust actions are always attended with more dreadful consequences than those of private people.

Other citations might be added almost indefinitely. The following references may be added:

F. de Martens, Int. Law, Paris, 1883, Vol. 1, pages 19, 20; Li. R. P. Tuparelli d'Azeglio, de la Compagnie de Jésus, Traduit de l'Italien, deux ed. tome II, ch. 2; Grotius De Jure, Belli ac Pacis, Proleg; Heffter, Int. Law of Europe, page 2; Bluntschli, Le Droit Int. Codifié, pages 1, 2; Pasquale Fiore, book 1, ch. 1; Ahrens, Course of Natural Law and the Philosophy of Law, Vol. II, book III, ch. 1; M. G. Masse, Commercial Law in its Relations to the Law of Nations, etc., Paris, 1874, book 1, Lib. II, ch. 1, page 33; Louis Renault, Introduction a l'Etude du Droit International, Paris, 1879, pages 13, 14

## SECOND.

### THE ACQUISITION BY RUSSIA OF JURISDICTIONAL OR OTHER RIGHTS OVER BERING SEA AND THE TRANSFER THEREOF TO THE UNITED STATES.

The first four questions submitted to the High Tribunal by the Treaty are these:

1. What exclusive jurisdiction in the sèa now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?
2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?
3. Was the body of water now known as the Behring Sea included in the phrase, 'Pacific Ocean,' as used in the treaty of 1825 between Great Britain and Russia; and, what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty?
4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring Sea east of the water boundary in the treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty?

The learned Arbitrators may have themselves had occasion to observe, and, if not, it will at an early stage in the discussion of this controversy become manifest to them, that in the consideration by writers upon international law and by learned judges administering that law, of the authority which nations may exercise upon the high seas, two subjects, essentially distinct, have been habitually confounded, and have not, even at this day, been clearly separated and defined. One is the exercise of the sovereign right of making laws operative upon the high seas and binding as well upon foreigners as citizens, which right must necessarily be limited by some definite boundary line. The other is the protection afforded by a nation to its property and other rights by reasonable and necessary acts of power against the citizens of other nations whenever it may be necessary on the high seas without regard to any boundary line. Much of this confusion has arisen and been fostered by the lack of precision in the meaning of words. The term "jurisdiction" has from the first been indifferently employed to denote both things. It has thus become a word of ambiguous import.

These two subjects may appear to have been to some extent confounded, or blended, in the minds of the negotiators of the treaty, for the four questions now about to be considered appear, at first view, to embrace both. The Tribunal is called upon to determine, on the one hand, what *exclusive jurisdiction in Bering Sea* Russia has asserted and exercised, which may not unreasonably be viewed as referring to the exercise of the sovereign power of legislation over that sea, tantamount to an extension of territorial sovereignty.

It is also called upon to determine what exclusive right in the "seal fisheries" in Bering Sea Russia asserted and exercised prior to the cession to the United States—a totally different question—although a decision of it, affirming the exclusive right, might carry with it, as a consequence, the right to protect such fisheries by a reasonable exercise of national power anywhere upon the seas where such exercise might be necessary.

And yet it is not probable that the negotiators, even if the two questions were to them distinctly in view, really intended to assign a distinct and separate importance to the *first*. The *real controversy* was upon the *second*, and the *first* was intended to be included, only so far as it might have a bearing upon the second. This is quite manifest from the circumstance that in neither of the four questions is the first of the two rights or claims stated alone and apart from the other; and still more from the language of the second question, which clearly implies that the claim of a right to exercise authority on the sea in defense of a property interest is the one principally intended to be submitted. The language is as follows: "How far were *these* claims of jurisdiction *as to the seal fisheries* recognized and conceded by Great Britain." This language clearly shows that the Russian claims of exclusive jurisdiction designed to be submitted to the Tribunal were such only as asserted a right to protect the sealing interest of Russia by action upon Bering Sea. And there is nothing in the diplomatic correspondence which led up to the treaty disclosing any assertion on the part of the United States to the effect that Russia had ever gained any right of exclusive legislation over that sea. On the contrary, such assertion had been emphatically disclaimed.

It is by no means intended in what has been said that the question what authority on Bering Sea, or, to use the ambiguous word, what "jurisdiction" in Bering Sea, Russia had asserted and exercised in relation to her sealing interests, is unimportant. That question, although in no sense a vital one, has a material bearing, and was designed to be embraced by the arbitration. The question whether property rights and interests exist, is one thing; the question what the nation to which they belong may, short of an exercise of the sovereign power of exclusive legislation, do by way of protecting them, is another; and both are by the treaty submitted to the Tribunal. Should it appear that Russia had for nearly a century actually asserted and exercised an authority in Bering Sea for the purpose of protecting her sealing interests, and that Great Britain had never resisted or disputed it, it would be quite too late for her now to draw the reasonableness of it into question.

A studied effort is made in the Case of Great Britain to make it appear that the United States have shifted their ground from time to time in relation to the subject of this controversy, by first asserting that Bering Sea was *mare clausum;* then by setting up an exclusive jurisdiction over an area with a radius of 100 miles around the Pribilof Islands; and, lastly, by abandoning both those positions, and asserting a property interest in the herds of seals. This appears from the deliberate statement which closes the Seventh Chapter of the Case of Great Britain, as follows:

> The facts stated in this chapter show:
>
> That the original ground upon which the vessels seized in 1886 and 1887 were condemned, was that Bering Sea was a *mare clausum*, an inland sea, and as such had been conveyed, in part, by Russia to the United States.
>
> That this ground was subsequently entirely abandoned, but a claim was then made to exclusive jurisdiction over 100 miles from the coast-line of the United States' territory.
>
> That subsequently a further claim has been set up to the effect that the United States have a property in and a right of protection over fur-seals in nonterritorial waters.

It will be necessary, in order to expose the error of this statement, to briefly review the several stages of the controversy, and draw attention to the grounds upon which the Government of the United States has taken its positions.

It was in September, 1886, that the attention of that Government was first called by Sir L. S. Sackville-West, Her Majesty's minister at Washington, to a reported seizure in Bering Sea of three British sealing vessels by a United States cruiser. Information only respecting the affair was at first asked for, and considerable delay occurred in procuring it; but, prior to September, 1887, copies of the records from the United States District Court of Alaska of the seizure and condemnation of these vessels had been furnished to the British Government. It appeared from these that the seizures were made in Bering Sea at a greater distance than three miles from the land; and thereupon Lord Salisbury, apparently assuming that the statutes of the United States which authorized the seizures, were based upon some supposed jurisdiction over Bering Sea acquired from Russia, addressed a note to Sir L. S. Sackville-West, in which he called attention to the Russian ukase of 1821, which asserted a peculiar right in that sea, the objections of the United States and Great Britain to that assertion, and the treaties between those two nations, respectively, and Russia of 1824 and 1825, and insisted that these documents furnished evidence conclusively showing that the seizures were unlawful.[1]

The United States Government did not then reply to the point thus raised; but its first attitude in relation to the matter was to suggest, by notes addressed to the different maritime nations, that a *peculiar property interest* was involved, which might justify the United States Government in exercising *an exceptional marine jurisdiction;* but that inasmuch as the race of fur-seals was of great importance to commerce and to mankind, it seemed the part of wisdom for the nations to consider whether some concurrent measures might not be agreed to which would, at the same time, preserve the seals and dispose of the cause of possible controversy.[2] The *first* attitude, therefore, taken by the United States was the suggestion of a *property interest*, and of an exceptional maritime right to protect it by preventing the destruction of the seals; but that all nations ought to unite in measures which would preserve them, and thus avoid occasion for controversy concerning the right.

On the 22d of January, 1890, Mr. Blaine, who had succeeded Mr. Bayard as Secretary of State, had occasion to make answer, in a note to Sir Julian Pauncefote, to further complaints on the part of the British Government concerning the course of the United States cruisers in intercepting Canadian vessels while engaged in taking fur-seals in the waters of Bering Sea. In the outset of his communication Mr. Blaine begins by pointing out that it is unnecessary to discuss any question of exclusive jurisdiction in the United States over the waters of that sea, because there were other grounds upon which the course of the United States was, in his opinion, fully justified. He thus expresses himself:

> In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that was in itself

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[1] Case of the United States, Appendix, Vol. I, p. 162.

[2] Case of the United States, Appendix, Vol. I, p. 168.

*contra bonos mores*, a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States. To establish this ground it is not necessary to argue the question of the extent and nature of the sovereignty of this Government over the waters of the Behring Sea; it is not necessary to explain, certainly not to define, the powers and privileges ceded by His Imperial Majesty the Emperor of Russia in the treaty by which the Alaskan territory was transferrred to the United States. The weighty considerations growing out of the acquisition of that territory, with all the rights on land and sea inseparably connected therewith, may be safely left out of view, while the grounds are set forth upon which this Government rests its justification for the action complained of by Her Majesty's Government.

Mr. Blaine then proceeds to point out that long before the acquisition of Alaska by the United States the fur-seal industry had been established by Russia upon the Pribilof Islands, and that while she had control over them, her possession and enjoyment thereof were in no way disturbed by other nations; that the United States, since the cession of 1867, had continued to carry on the industry, cherishing the herd of fur-seals on those islands, and enjoying the advantage thereof; that in the year 1886, vessels, mostly Canadian, were fitted out for the purpose of taking seals in the open sea, and that the number of vessels engaged in the work had continually increased; that they engaged in an indiscriminate slaughter of the seals, very injurious to the industry prosecuted by the United States, and threatening the extermination substantially of the species. He insisted that the ground upon which Her Majesty's Government was disposed to defend these Canadian vessels, viz., that their acts of destruction were committed at a distance of more than three miles from the shore line, was wholly insufficient; that to exterminate an animal useful to mankind was in itself in a high degree immoral, besides being injurious to the interests of the United States that the "law of the sea is not lawlessness," and that the liberty which it confers could not be "perverted to justify acts which are immoral in themselves, and which inevitably tend to results against the interests and against the welfare of mankind."

It is, therefore, entirely clear that Mr. Blaine improved the first occasion upon which he was called upon to refer to the subject, to place the claims of the United States distinctly on the ground of a *property interest*, which could not be interfered with by other nations upon the high seas, by practices which in themselves were essentially immoral and contrary to the law of nature.[1]

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[1] Mr. Blaine to Sir Julian Pauncefote, Case of the United States, Appendix, Vol. I, p. 200.

This correspondence was followed by further diplomatic communications looking to the establishment of regulations designed to restrict pelagic sealing; and on the 22d of May, 1890, the Marquis of Salisbury addressed a note to Sir Julian Pauncefote, in the nature of an answer to the note last above mentioned from Mr. Blaine, and it appears from this, very clearly, that he did not misunderstand the positions taken by Mr. Blaine. He thus expresses himself:

> Mr. Blaine's note defends the acts complained of by Her Majesty's Government on the following ground:
>
> 1. That "the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that is in itself *contra bonos mores*—a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States."
>
> 2. That the fisheries had been in the undisturbed possession and under the exclusive control of Russia from their discovery until the cession of Alaska to the United States in 1867, and that from this date onwards until 1886 they had also remained in the undisturbed possession of the United States Government.
>
> 3. That it is a fact now held beyond denial or doubt that the taking of seals in the open sea rapidly leads to the extinction of the species, and that therefore nations not possessing the territory upon which seals can increase their numbers by natural growth should refrain from the slaughter of them in the open sea.

Lord Salisbury, in this note, insists that whatever may be the value of the industry to the United States, they would not be authorized in preventing by force the practice of pelagic sealing; but he does not choose to enter into any discussion of the question whether the indiscriminate slaughter of seals manifestly tending to the extermination of the species could be justified. His lordship, however, in answer to the alleged exclusive monopoly of Russia in the fur-seal industry, referred to the Russian ukase of 1821, as if Mr. Blaine had insisted upon claims similar to those advanced in that document, and quoted some language from a communication of Mr. John Quincy Adams, when Secretary of State, to the United States minister in Russia, contesting the pretension set up in the ukase.[1]

Meanwhile further diplomatic communications were taking place in relation to the establishment of restrictions designed to limit the practice of pelagic sealing and prevent, in some measure at least, its destructive operation; and it would seem that these efforts had been nearly successful, and would have been entirely consummated, but for objections interposed on the part of Canada.[2]

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[1] Case of the United States, Appendix, Vol. I, p. 207.

[2] Case of the United States, Appendix, Vol. I, pp. 212–224.

On the 30th of June, 1890, Mr. Blaine addressed a note to Sir Julian Pauncefote in which he referred to Lord Salisbury's note, above mentioned, of May 22, and especially to the passage quoted in it from the communication of Mr. John Quincy Adams to the American minister in Russia, in which the pretensions advanced by Russia in the ukase of 1821 were resisted. He endeavored, in an argument of some length, to show that the claim set up by Russia in 1821 to a peculiar jurisdiction had not been surrendered by the treaties of 1824 and 1825 with the United States and Great Britain, respectively, so far as related to Bering Sea, and had not been otherwise abandoned. He insisted that the ukase of 1821, while not designed to declare the Bering Sea to be *mare clausum*, assumed to exclude, for certain purposes at least, other nations from a space on the high seas to the distance of 100 miles from the shore, and that this pretension on the part of Russia had never been surrendered or abandoned, and had been, in substance, acquiesced in by other nations, and in particular by Great Britain.[1]

The views thus expressed by Mr. Blaine, which were really not essential to the main controversy, and were drawn from him by the reference which Lord Salisbury had made to the Russian ukase of 1821, and the subsequent protests, negotiations, and treaties between Russia and the United States and Great Britain, respectively, were responded to in a note from Lord Salisbury to Sir Julian Pauncefote of August 2, 1890.[2] In this note his lordship considered the subject at much length, and argued that, on general principles of international law, no nation can rightfully claim jurisdiction at sea beyond a marine league from the coast. This general principle, so far as it is one, had never been denied by Mr. Blaine, his position being that there might be, and in some instances were, cases which called for exceptions from the operation of the general rule, so far, at least, as to give a nation a right to exclude, for certain purposes, foreign vessels from a belt of the sea much wider than three miles.

On the 17th of December, 1890, Mr. Blaine, in a note to Sir Julian Pauncefote,[3] referred to the note of Lord Salisbury, last mentioned, and reasserted his position. The controversy respecting the claims of Russia now became, substantially, whether, in the treaties of 1824 and 1825 between the United States and Great Britain, respectively, the term "Pacific Ocean," as used in the treaties, was intended to include the body of water now known as Bering Sea. If it were true as Lord Salisbury contended, that Bering Sea was thus included, then it would follow that the pretensions made by Russia in the ukase of 1821, so far as they were surrendered by the treaties above referred to, were surrendered as well in respect to Bering Sea as in respect to the Pacific Ocean south of that sea. If, on the other hand, as Mr. Blaine contended, Bering Sea was not intended to be embraced by the term "Pacific Ocean," it would follow that the assertions of jurisdiction in Bering Sea made by the ukase of 1821 had received a very large measure of acquiescence both from Great Britain and the United States.

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[1] Case of the United States, Appendix, Vol. I, p. 224.

[2] Case of the United States, Appendix, Vol. I, p. 242.

[3] Case of the United States, Appendix, Vol. I, p. 263.

But, in the opinion of the undersigned, the point, though not wholly irrelevant, is, comparatively speaking unimportant. It was never put forward by the United States as the sole ground, or as the principal ground upon which that Government rested its claims. Notwithstanding the large space devoted to it in the diplomatic discussions, it came in incidentally only. It is not at all improbable that Lord Salisbury preferred to draw the discussion as much as possible away from the question of property interests, and away from the charge that pelagic sealing was a practice which threatened a useful race of animals with extermination, and was wholly destitute of support upon any grounds of reason. It may be true also that Mr. Blaine in some measure magnified the effect which might flow from the pretensions made by Russia in the ukase of 1821, so far as they were acquiesced in by Great Britain and the United States.

But what is absolutely certain is that the original attitude taken by the United States, as already mentioned, followed up and reasserted in more than one diplomatic communication, was never, at any time, in the slightest degree abandoned or changed, and this is conclusively evidenced by the last communication of Mr. Blaine, already referred to. Near the close of that note[1] he says:

> In the judgment of the President, nothing of importance would be settled by proving that Great Britain conceded no jurisdiction to Russia over the seal fisheries of the Bering Sea. It might as well be proved that Russia conceded no jurisdiction to England over the river Thames. By doing nothing in each case, everything is conceded. In neither case is anything asked of the other. "Concession," as used here, means simply *acquiescence* in the rightfulness of the title, and that is the only form of concession which Russia asked of Great Britain or which Great Britain gave to Russia.

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[1] Case of the United States, Appendix, Vol. I, p. 285.

The second offer of Lord Salisbury to arbitrate, amounts simply to a submission of the question whether any country has a right to extend its jurisdiction more than one marine league from the shore. No one disputes that, as a rule; but the question is, whether there may not be exceptions whose enforcement does not interfere with those highways of commerce which the necessities and usage of the world have marked out. * * *

The repeated assertions that the Government of the United States demands that the Bering Sea be pronounced *mare clausum*, are without foundation. The Government has never claimed it and never desired it. It expressly disavows it. At the same time the United States does not lack abundant authority, according to the ablest exponents of international law, for holding a small section of the Bering Sea for the protection of the fur-seals. Controlling a comparatively restricted area of water for that one specific purpose is by no means the equivalent of declaring the sea, or any part thereof, *mare clausum*. Nor is it by any means so serious an obstruction as Great Britain assumed to make in the South Atlantic, nor so groundless an interference with the common law of the sea as is maintained by British authority to-day in the Indian Ocean. The President does not, however, desire the long postponement which an examination of legal authorities from Ulpian to Phillimore and Kent would involve. He finds his own views well expressed by Mr. Phelps, our late minister to England, when, after failing to secure a just arrangement with Great Britain touching the seal fisheries, he wrote the following in his closing communication to his own Government, September 12, 1888:

"Much learning has been expended upon the discussion of the abstract question of the right of *mare clausum*. I do not conceive it to be applicable to the present case.

"Here is a valuable fishery and a large and, if properly managed, permanent industry, the property of the nation on whose shores it is carried on. It is proposed by the colony of a foreign nation, in defiance of the joint remonstrance of all the countries interested, to destroy this business by the indiscriminate slaughter and extermination of the animals in question, in the open neighboring sea, during the period of gestation, when the common dictates of humanity ought to protect them, were there no interest at all involved. And it is suggested that we are prevented from defending ourselves against such depredations because the sea at a certain distance from the coast is free.

"The same line of argument would take under its protection piracy and the slave trade when prosecuted in the open sea, or would justify one nation in destroying the commerce of another by placing dangerous obstructions and derelicts in the open sea near its coasts. There are many things that can not be allowed to be done on the open sea with impunity, and against which every sea is *mare clausum*; and the right of self-defense as to person and property prevails there as fully as elsewhere. If the fish upon Canadian coasts could be destroyed by scattering poison in the open sea adjacent, with some small profit to those engaged in it, would Canada, upon the just principles of international law, be held defenseless in such a case? Yet that process would be no more destructive, inhuman, and wanton than this.

"If precedents are wanting for a defense so necessary and so proper, it is because precedents for such a course of conduct are likewise unknown. The best international law has arisen from precedents that have been established when the just occasion for them arose, undeterred by the discussion of abstract and inadequate rules."

The design of the foregoing review of the principal points made in the diplomatic discussions which preceded the Treaty under which this Tribunal was constituted has been to show that the main grounds upon which, from first to last, the claims of the United States were based were the property and industrial interests of that nation; and that the purpose of Mr. Blaine, in taking up the discussion tendered by Lord Salisbury in relation to the ukase of 1821 and the subsequent treaties of 1824 and 1825, was simply to point out that the assertions by Russia of exceptional authority over certain portions of the high seas were, so far as respects Bering Sea, not only never abandoned by her, but were practically conceded and acquiesced in by Great Britain, and that, consequently, the United States could assert against Great Britain a right to protect their sealing interests, not only upon general principles of international law, but upon the additional and reinforcing ground that Russia, in order to defend the same interests, had asserted and exercised an exceptional authority over Bering Sea for nearly half a century, with the acquiescence of Great Britain, and that any right thus acquired had passed to the United States by the cession of Alaska.

In the view of the undersigned, Mr. Blaine was entirely successful in establishing his contention that the assertion by Russia of an exceptional authority over the seas, including an interdiction of the approach of any foreign vessel within 100 miles of certain designated shores, while abandoned by her treaty with Great Britain in 1825 as to all the northwest coast south of the 60th parallel of north latitude, was, so far as respects Bering Sea, and the islands thereof, and the coast south of the 60th parallel, never abandoned by her, but was acquiesced in by Great Britain. And if the undersigned believed the point to be one upon which any of the claims of the United States really depended, they would deem it their duty to again present the argument of Mr. Blaine, together with further suggestions which would reinforce it. But they greatly prefer to place the case of the United States upon its real and original grounds, which, as it seems to them, admit of no dispute, and not to rely upon arguments which, however successful in their avowed purposes, are yet, perhaps, to be deemed somewhat aside from the main question. They prefer to submit to this Tribunal that Russia had for nearly a century before the cession of Alaska established and maintained a valuable industry upon the Pribilof Islands, founded upon a clear and indisputable property interest in the fur-seals which make those islands their breeding places, an industry not only profitable to herself, but in a high degree useful to mankind; that the United States since the cession have, upon the basis of the same property interest, carefully maintained and cherished that industry, and that no other nations, or other men, have any right to destroy or injure it by prosecuting an inhuman and destructive warfare upon the seal in clear violation of natural law; and that the United States have full and perfect right, under the law of nations, to prevent this destructive warfare by the reasonable exercise of necessary force wherever upon the seas such exercise is necessary to the protection of their property and industry. The undersigned therefore submit the question concerning the assertions of maritime authority by Russia and the acquiescence therein by Great Britain upon the argument of Mr. Blaine, contained in his notes to Sir Julian Pauncefote of June 30, 1890,[1] and December 17, 1890.[2]

It is, however, important that the real nature of these assertions should not be misunderstood. The words "exclusive jurisdiction in Bering Sea" are used in the questions formulated in the treaty by way of description of the claims of Russia, and the same, or similar, language will be found in various places in the diplomatic argument to have been employed in a like sense. From this it might be thought that what Russia was supposed to have asserted, and what the United States claimed as a right derived from her, was a sovereign jurisdiction over some part of Bering Sea, making it a part of their territory and subject to their laws. This would be entirely erroneous. Russia never put forward any such pretension. Her claims were that certain shores and islands on the Northwest coast and in the Pacific Ocean and Bering Sea were part of her territory, acquired by discovery and occupation, upon which she had colonial establishments and fishing and sealing industries. She chose, in accordance with the policy of the time, to confine the right to trade with these colonies, and the fishing and fur-gathering industries connected with those territorial possessions, to herself. Concerning her right to do this there never was, or could be, any dispute. So far as her pretensions to exercise an exceptional maritime authority were concerned, they were limited to such measures as she deemed necessary for the protection of these admitted rights. She did not claim to make laws for the sea. The particular assertion of authority which was the interesting point in the discussion between

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[1] Case of the United States, Appendix, Vol. I, p. 224.

[2] *Ibid*, p. 263.

Mr. Blaine and Lord Salisbury was the interdiction to foreign vessels of an approach to the shores and islands referred to nearer than 100 miles. This, of course, was no assertion of exclusive jurisdiction, or of jurisdiction at all, in the strict sense of that term. It was the assertion of a right to protect interests attached to the shore from threats and danger of invasion. It was in no wise different *in its nature* from a multitude of assertions of a right to exercise national authority over certain parts of the sea made by different nations before and since, and by none more frequently or extensively than by Great Britain. It was an assertion of power essentially the same as that of which the *hovering laws* are instances. The extent of the interdiction from the shore—100 miles—might have been extreme, although this is by no means certain. A distance which would be excessive in the case of a frequented coast, the pathway of abundant commerce, might be entirely reasonable in a remote and almost uninhabited quarter of the globe to which there was little occasion for vessels to resort except for the purpose of engaging in prohibited trade. It must be remembered that the interdiction was not made for the purpose of preventing, or restricting, pelagic sealing. That pursuit had not even been thought of at that time. Had that danger then threatened the sealing interests of Russia a much more extensive restriction might justly have been imposed.

As already observed it is not intended by the undersigned to intimate that the question what authority over Bering Sea Russia claimed the right to exercise and how far the claim was acquiesced in by Great Britain, has no importance in the present controversy; but to point out the nature of that claim, and to indicate its appropriate place in the present discussion. It has a very distinct significance as showing that assertions on the part of Russia of a right to defend and protect her colonial trade and local industries by the reasonable exercise of force in Bering Sea were assented to by Great Britain during the whole period of the Russian occupation of Alaska, and, by consequence, that the present complaints of the latter against a similar exercise of power by the United States are wholly inconsistent with her former attitude and admissions.

Again referring to the broad distinction between that power of sovereign jurisdiction exercised by a nation over nonterritorial waters, which consists in the enactment of municipal laws designed to be operative upon such waters against the citizens of other nations, and the exercise of authority and power over such waters limited to the necessary defence of its property and local interests, the undersigned insist that the former has no material place in this discussion. Russia never insisted upon it so far as respects the regions to which our attention is directed, or the industry of sealing which is here a subject of discussion. The United States never have claimed it and do not now claim it. Themselves a maritime nation, they assert, as they always have asserted, the freedom of the seas. But they suppose it to be quite certain that the doctrine of the freedom of the seas has never been deemed by civilized nations as a license for illegal or immoral conduct, or as in any manner inconsistent with the general and necessary right of self-defence above mentioned, which permits a nation to protect its property and local interests against invasion by wrongdoers wherever upon the sea the malefactors may be found. This right and the grounds and reasons upon which the present case calls for an application of it, are directly embraced by the Fifth Question which is submitted to the Tribunal, and are, in the opinion of the undersigned, the proper subjects of principal attention, and they will elsewhere, in the appropriate place, devote to them that deliberate and full consideration which their importance demands.

We may, however, briefly observe here, that according to the best authorities in international law the *occupation* of a new country which is sufficient to give to the occupying nation a title to it depends very largely upon the nature of the country and the beneficial uses which it may be made to subserve. In the case of a fruitful region capable of supporting a numerous population, it might not be allowable for a nation first discovering it to maintain a claim over vast areas which it did not actually occupy and attempt to improve; but where a remote and desolate region has been discovered, yielding only a single or few products, and all capable of being beneficially secured by the discovering nation, a claim to these products asserted and actually exercised, is all the occupation of which the region is susceptible and is sufficient to confer the right of property; and that whatever authority it may be reasonably necessary to exercise upon the adjoining seas in order to protect such interests from invasion may properly be asserted. Says Phillimore, who seems to have understood the Oregon territory as embracing the whole northwest coast of North America:

> A similar settlement was founded by the British and Russian Fur Companies in North America.
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> The chief portion of the Oregon Territory is valuable solely for the fur-bearing animals which it produces. Various establishments in

different parts of this territory organized a system for securing the preservation of these animals, and exercised for these purposes a control over the native population. This was rightly contended to be the only exercise of *proprietary right* of which these particular regions were at that time susceptible, and to mark that a *beneficial use* was made of the whole territory by the occupants.[1]

The first four questions submitted to the Tribunal by the Treaty should, in the opinion of the undersigned, be answered as follows :—

First. Russia never at any time prior to the cession of Alaska to the United States claimed any exclusive jurisdiction in the sea now known as Bering Sea, beyond what are commonly termed territorial waters. She did, at all times since the year 1821, assert and enforce an exclusive right in the "seal fisheries" in said sea, and also asserted and enforced the right to protect her industries in said "fisheries" and her exclusive interests in other industries established and maintained by her upon the islands and shores of said sea, as well as her exclusive enjoyment of her trade with her colonial establishments upon said islands and shores, by establishing prohibitive regulations interdicting all foreign vessels, except in certain specified instances, from approaching said islands and shores nearer than 100 miles.

Second. The claims of Russia above mentioned as to the "seal-fisheries" in Bering Sea were at all times, from the first assertion thereof by Russia down to the time of the cession to the United States, recognized and acquiesced in by Great Britain.

Third. "The body of water now known as Behring Sea was not included in the phrase 'Pacific Ocean,' as used in the treaty of 1825, between Great Britain and Russia;" and after that treaty Russia continued to hold and to exercise exclusively a property right in the fur-seals resorting to the Pribilof Islands, and to the fur-sealing and other industries established by her on the shores and islands above mentioned, and to all trade with her colonial establishments on said shores and islands, with the further right of protecting, by the exercise of necessary and reasonable force over Bering Sea, the said seals, industries, and colonial trade from any invasion by citizens of other nations tending to the destruction or injury thereof.

Fourth. "All the rights of Russia as to jurisdiction and as to the seal fisheries in Bering Sea east of the water boundary in the treaty between the United States and Russia, of the 30th of March, 1867," did "pass unimpaired to the United States under that treaty."

James C. Carter.

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[1] Int. Law, Vol. I, pp. 259, 260.

# THIRD.

## THE PROPERTY OF THE UNITED STATES IN THE ALASKAN SEAL HERD AND THEIR RIGHT TO PROTECT THEIR SEALING INTERESTS AND INDUSTRY.

### I.—The Property of the United States in the Alaskan Seal Herd.

The subject which, in the order adopted by the treaty, is next to be considered, is that of the assertion by the United States of a property interest in the Alaskan seals. Under this head there are two questions, which, though each may involve, in large measure, the same considerations, are yet in certain respects so different as to make it necessary or expedient that they should be separately discussed. The *first* is whether the United States have a property interest in the seals themselves, not only while they are upon the breeding islands, but also while they are in the high seas. The *second* is whether, if they have not a clear property in the seals themselves, they have such a property interest in the *industry* long established and prosecuted on the Pribilof Islands of maintaining and propagating the herd, and appropriating the increase to themselves for the purposes of commerce and profit, as entitles them to extend their protection to such herd against capture while it is on the high seas, and to require and receive from other nations an acquiescence in reasonable regulations designed to afford such protection.

The material difference between these questions will be perceived from a glance at the consequences which would flow from a determination of each of them respectively in favor of the claims of the United States. If it were determined that the United States had the property interest which they assert only *in the industry* established on the shore, it might, with some show of reason, be insisted that, if the industry were not actually established, they would have no right to forbid interference with the seals in the open sea; but were it determined that the United States had the property interest which they assert in the seals themselves, it would follow that they would have the right at any time to take measures to establish such an industry, and to forbid any interference with the seals which would tend to make its establishment impossible or difficult.

The proposition which the undersigned will first lay down and endeavor to maintain is that the United States, have by reason of the nature and habits of the seals and their ownership of the breeding grounds to which the herds resort, and irrespective of the established industry above mentioned, a property interest in those herds as well while they are in the high seas as upon the land.

It is first to be observed that although the established doctrines of municipal law may be properly invoked as affording light and information upon the subject, the question is not to be determined by those doctrines. Questions respecting property in lands, or movable things which have a fixed *situs* within the territorial limits of a nation are, indeed, to be determined exclusively by the municipal law of that nation; but the municipal law can not determine whether movable things, like animals are, while they are in the high seas, the property of oue nation as against all others. If, indeed, it is determined that such animals have a *situs* upon the land, notwithstanding their visits to, and migration in the sea, it may then be left to the power which has dominion over such land to determine whether such animals are property; but the question whether they have this *situs* must be resolved by international law.

The position taken on the part of Great Britain is not that the seals belong to her, but that they do not belong to any nation or to any men; that they are *res communes*, OR, *res nuillius;* in other words, that they are *not the subject* of property, and are consequently open to pursuit and capture on the high seas by the citizens of any nation. This position is based upon the assertion that they belong to the class of wild animals, animals *feræ naturæ*, and that these are not the subject of ownership. On the other hand, it is insisted on the part of the United States that the terms *wild* and *tame*, *feræ* and *domitæ*, *naturæ*, are not sufficiently precise for a legal classification of animals in respect to the question of property; that it is open to doubt, in many cases, whether an animal should be properly designated as wild or tame, and that the assignment of an animal to the one class rather then to the other is by no means decisive of the question whether it is to be regarded as property. In the view of the United States, while the words *wild* and *tame* describe sufficiently for the purposes of common speech and nature and habits of animals, and indicate *generally* whether they are or are not the subjects of property, yet there are many animals which lie near to the boundary imperfectly drawn by these terms, and in respect to which the question of property can be determined only by a closer inquiry into their nature and habits, and one more particularly guided by the considerations upon which the institution of property stands. If the question were asked why a tame or domestic animal should be property and a wild one not, these terms would be found to supply no reasons. The answer would be because tame animals exhibit certain qualities, and wild ones other and different qualities; thus showing that the question of property depends upon the characteristics of the animal. This view seems to be correct upon its mere statement, and it will be found to be the one adopted and acted upon by the writers of recognised authority upon the subject of property. It would be sufficient for the present purpose to refer to the language of Chancellor Kent upon this point. No dissent from it will anywhere be found. He says:

> Animals *feræ naturæ*, so long as they are reclaimed by the art and power of man, are also the subject of a qualified property; but when they are abandoned, or escape, and return to their natural liberty and ferocity, without the *animus revertendi*, the property in them ceases. While this qualified property continues, it is as much under the protection of law as any other property, and every evasion of it is redressed in the same manner. The difficulty of ascertaining with precision the application of the law arises from the *want of some certain determinate standard or rule* by which to determine when an animal is *feræ, vel domitæ naturæ.* If an animal belongs to the class of tame animals, as, for instance, to the class of horses, sheep, or cattle, he is then a subject clearly of absolute property; but if he belongs to the class of animals, which are wild by nature, and owe all their temporary docility to the discipline of man, such as deer, fish, and several kinds of fowl, then the animal is a subject of qualified property, and which continues so long only as the tameness and dominion remain. It is a theory of some naturalists that all animals were originally wild, and that such as are domestic owe all their docility and all their degeneracy to the hand of man. This seems to have been the opinion of Count Buffon, and he says that the dog, the sheep, and the camel have degenerated from the strength, spirit, and beauty of their natural state, and that one principal cause of their degeneracy was the pernicious influence of human power. Grotius, on the other hand, says that savage animals owe all their untamed ferocity not to their own natures, but to the violence of man; but the common law has wisely avoided all perplexing questions and refinements of this kind, and has adopted the test laid down by Puffendorf,[1] by referring the question whether the animal be wild or tame *to our knowledge of his habits* derived from fact and experience.

To this citation we may add the authority, which will not be disputed in this controversy, of two decisions of the court of common pleas in

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[1] Law of Nature and Nations, Lib. 4, Chap. 6, sec. 5. [2] Kent's Com., Vol. II, p. 348.

Great Britain. In the case of Davies *vs.* Powell (Willes, 46) the question was whether deer kept in an inclosure were *distrainable for rent.* The court took notice of the *nature and habits* of these animals as affected by the *care and industry of man* and the *uses which they were made to subserve;* and it observed that, while they were formerly kept principally for pleasure and not for profit, the practice had arisen of caring for them and rearing and selling them, and, in view of these facts, declared that they had become "as much a sort of husbandry as horses, cows, sheep, or any other cattle."

And, more recently, the question was made in the case of Morgan *v.* The Earl of Abergavenny (8 C. B., 768), whether deer thus kept passed upon the death of the owner to the heir or to the executor; that is to say, whether they were *personal* property or *chattels real.* Evidence was received upon the trial showing the *nature and habits* of the animals; that they were *cared for and fed* and *selections made from them for slaughter;* and upon this evidence it was left to the jury to say whether they were *personal* property. The jury found that they were; and the court upon a review of the case approved the verdict, holding that the question was justly made to depend upon the facts which had been given in evidence.

Inasmuch as the present controversy upon this point is one between nations, it can not be determined by a reference to the municipal law of either, or by the municipal law of any nation. The rule of decision must be found in international law; and, as has already been shown, if there is no actual practice or usage of nations directly in point, as there is not, recourse must be had to the principles upon which international law is founded—that is to say, to the law of nature. But the question whether a particular thing is the subject of property, as between nations, is substantially the same as the question whether the same thing is property as between individuals in a particular nation. Now, it so happens that this latter question has been determined, whenever it has arisen, not by any exercise of legislative power, but by an adoption of the rule of the law of nature. And the municipal jurisprudence of all nations, proceeding upon the law of nature, is everywhere in substantial accord upon the question what things are the subject of property. That jurisprudence, therefore, so far as it is consentaneous, may be invoked in this controversy, as directly evidencing the law of nature, and, therefore, of nations.

Proceeding to the examination of the doctrines of this municipal jurisprudence, it appears, immediately, that there is no rule or principle to the effect that *no* wild animals are the subject of property. On the contrary, we find that from an early period in the Roman law a distinct consideration has been given to the question, what animals, commonly designated as wild, are the subjects of property, and to what extent. And the doctrine established by that law, and adopted, it is believed, wherever that law has been received as the basis of municipal jurisprudence was also carried into the jurisprudence of England at the first stage of its development, and has ever since been received and acted upon by all English-speaking nations. It is well expressed in the Commentaries of Blackstone :[1]

> II. Other animals that are not of a tame and domestic nature are either not the objects of property at all or else fall under our other division, namely, that of *qualified*, *limited*, or *special* property, which is such as is not in its nature permanent, but may sometimes subsist and at other times not subsist. In discussing which subject, I shall, in the first place, show how this species of property may subsist in such animals as are *feræ naturæ*, or of a wild nature, and then how it may subsist in any other things when under particular circumstances.
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> First, then, a man may be invested with a qualified, but not an absolute property in all creatures that are *feræ naturæ*, either *per industriam*, *propter impotentiam*, or *propter privilegium*.
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> 1. A qualified property may subsist in animals *feræ naturæ per industriam hominis*, by a man's *reclaiming* and making them tame by art, industry, and education, or by so confining them within his own immediate power that they can not escape and use their natural liberty. And under this head some writers have ranked all the former species of animals we have mentioned, apprehending none to be originally and naturally tame, but only made so by art and custom, as horses, swine, and other cattle which, if originally left to themselves, would have chosen to rove up and down, seeking their food at large, and are only made domestic by use and familiarity, and are, therefore, say they, called *mansueta, quasi manui assueta.* But however well this notion may be founded, abstractly considered, our law apprehends the most obvious distinction to be between such animals as we generally see tame, and are therefore seldom, if ever found, wandering at large, which it calls *domitæ naturæ*, and such creatures as are usually found at liberty, which are therefore supposed to be more emphatically *feræ naturæ*, though it may happen that the latter shall be sometimes tamed and confined by the art and industry of man—such as are deer in a park, hares or rabbits in an inclosed warren, doves in a dove house, pheasants or partridges in a mew, hawks that are fed and commanded by their owner, and fish in a private pond or in trunks. These are no longer the property of a man than while they continue in his keeping or actual possession ; but if at any time they regain their natural liberty his property instantly ceases, unless they have *animum revertendi*, which is only to be known by their usual custom of returning. A maxim which is borrowed from the civil law, "*revertendi animum videntur desinere habere tunc, cum revertendi consuetudinem deseruerint.*" The law,

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[1] Book II, p. 391.

therefore extends this possession further than the mere manual occupation; for my tame hawk, that is pursuing his quarry in my presence, though he is at liberty to go where he pleases, is nevertheless my property, for he hath *animum revertendi.* So are my pigeons that are flying at a distance from their home (especially of the carrier kind), and likewise the deer that is chased out of my dark or forest, and is instantly pursued by the keeper or forester; all which remain still in my possession, and I still preserve my qualified property in them. But if they stray without my knowledge, and do not return in the usual manner, it is then lawful for any stranger to take them. But if a deer, or any wild animal reclaimed hath a collar or other mark put upon him, and goes and returns at his pleasure, or if a wild swan is taken and marked and turned loose in the river, the owner's property in him still continues. and it is not lawful for anyone else to take him; but otherwise if the deer has been long absent without returning, or the swan leaves the neighbourhood. Bees also are *feræ naturæ;* but, when hived and reclaimed. a man may have a qualified property in them, by the law of nature, as well as by the civil law. And to the same purpose, not to say in the same words with the civil law, speaks Bracton; occupation, that is, hiving or including them, gives the property in bees; for, though a swarm lights upon my tree, I have no more property in them till I have hived them than I have in the birds which make their nests thereon; and, therefore, if another hives them, he shall be their proprietor; but a swarm, which fly from and out of my hive, are mine so long as I can keep them in sight and have power to pursue them, and in these circumstances no one else is entitled to take them. But it hath been also said that with us the only ownership in bees is *ratione soli,* and the charter of the forest, which allows every freeman to be entitled to the honey found within his own woods, affords great countenance to this doctrine, that a qualified property may be had in bees, in consideration of the property of the soil whereon they are found.

In all these creatures, reclaimed from the wildness of their nature, the property is not absolute, but defeasible: a property that may be destroyed if they resume their ancient wildness, and are found at large. For if the pheasants escape from the mew, or the fishes from the trunk, and are seen wandering at large in their proper element, they become *feræ naturæ* again, and are free and open to the first occupant that has ability to seize them. But while they thus continue my qualified or defeasible property, they are as much under the protection of the law as if they were absolutely and indefeasibly mine; and an action will lie against any man that detains them from me or unlawfully destroys them. It is also as much felony by common law to steal such of them as are fit for food as it is to steal tame animals; but not so if they are only kept for pleasure, curiosity, or whim; as dogs, bears, cats, apes, parrots, and singing birds; because their value is not intrinsic, but depending only on the caprice of the owner; though it is such an invasion of property as may amount to a civil injury, and be redressed by a civil action. Yet to steal a reclaimed hawk is felony both by common law and statute; which seems to be a relic of the tyranny of our ancient sportsmen. And, among our elder ancestors, the ancient Britons, another species of reclaimed animals, viz., cats, were looked upon as creatures of intrinsic value; and the killing or stealing one was a grievous crime, and subjected the offender to a fine; especially if it belonged to the King's household, and was the *custos horrei regii,* for which there was a very peculiar forfeiture. And thus much of qualified property in wild animals, reclaimed *per industriam.*

From the general doctrine thus declared no dissent, will, it is believed, be anywhere found. It has been reaffirmed in many instances by the courts both of Great Britain and the United States. The special attention of the Tribunal should be given to the utterances upon this question both by judicial tribunals and by jurists of established authority, and a somewhat copious collection of them will be found in Appendix.

It will be observed that the *essential facts* which, according to these doctrines, render animals commonly designated as wild, the subjects of property not only while in the actual custody of their masters but also when temporarily absent therefrom, are that the *care and industry of man* acting upon a *natural disposition* of the animals to *return* to a place of wonted resort, secures their *voluntary* and *habitual return* to his *custody* and *power*, so as to enable him to *deal with them in a similar manner*, and to obtain from them *similar benefits*, as in the case of *domestic* animals. They are thus for all the purposes of *property* assimilated to domestic animals. It is the *nature and habits* of the animal, which enable man, by the practice of *art, care, and industry*, to bring about these *useful results* that constitute the foundation upon which the law makes its award of property, and extends to this product of human industry the protection of ownership. This species of property is well described as property *per industriam.*

The Alaskan fur-seals are a typical instance for the application of this doctrine. They are by the imperious and unchangeable instincts of their nature impelled to return from their wanderings to the *same place;* they are defenceless against man, and in returning to the same place voluntarily subject themselves to his power, and enable him to treat them in the same way and to obtain from them the same benefits as may be had in the case of domestic animals. They thus become the subjects of ordinary husbandry as much as sheep or any other cattle. All that is needed to secure this return, is the exercise of care and industry on the part of the human owner of the place of resort. He must *abstain* from killing or repelling them when they seek to return to it, and must invite and cherish such return. He must defend them against all enemies by land or sea. And in making his selections for slaughter, he must disturb them as little as possible and take *males* only. All these conditions are perfectly supplied by the United States, and their title is thus fully substantiated.

What ground of difference in respect to the point in question can be suggested between these seals and the other animals, such as deer, bees, wild geese, and wild swans, which appear by the authorities referred to to be universally regarded as property so long as they retain the *animum revertendi?* Will it be said that this *animus* is created by man in the case of those animals, and in the seals is a natural instinct? If this were true it would be unimportant. The essential thing is that the art and industry of man should bring about the *useful result;* and to this end human art, care and industry are as necessary and as effective in the one case as in the others. If man did not *choose* to practice this care and industry in respect to the seals, if he exhibited no *husbandry*, but *treated them as wild animals*, and attacked and killed them as they sought the land, they would be driven away to other haunts or be speedily exterminated. But it is not true that the disposition to return is created by man. The habitual return of the other animals mentioned is due to their natural instincts just as much as that of the seals is to theirs. Many races of animals have what may be called *homes.* It is natural *instinct* which prompts them to return to the spot where they rear their young or can find their food or a secure place of repose. What man does in any of these instances, and as much in one as in another, is, *to act upon this instinct* and make it available to secure the return. If the seals will return to the same place and voluntarily put themselves in the power of man with less effort on his part than in the case of the other animals, it shows only that they are by nature less wild and less inclined to fly from the presence of man. In the case of the bees, for instance, it is plain that their nature is no more changed by man than that of the seals. They are as wild when dwelling in an artificial hive as when they are in the woods; nor does man feed them; they gain their food from flowers which, for the most part, belong to persons other than their masters. Will it be said that the wanderings of the seals are very distant? Of what consequence is this so long as the return is certain? Bees wander very long distances. Will it be insisted that it makes any difference on the question of property whether a cow seal goes five, or a hundred miles in the sea to obtain food to enable her to nourish her offspring on the shore? Probably the long duration of migration to the south in the winter will be urged as a striking distinction between the case of the seals and the other instances; but what difference can this make if the *animus revertendi* remains, as it unquestionably does, and the same beneficial results are secured?

The difficulty of identification may be suggested, but it does not exist. There is no commingling with the Russian herd. Every fur-seal on the Northwest coast belongs indisputably to the Alaskan herd. But if there were any such supposed difficulty, it would matter nothing. If a man, without authority, kills cattle wandering without guard over the boundless plains of the interior of the United States, he is a plain trespasser. It might be difficult for any particular owner to make out a case of damages against him, but he would be none the less a trespasser for that. If a man kills a reclaimed swan or goose innocently, and believing it to be wild, he is, indeed, excusable, and if there were different herds of fur-seals, some of them property and others not, it might be difficult to show that one who killed seals at sea had notice that they were property; but there are no herds of fur-seals in the North Pacific which are not in the same condition with those of Alaska.

It does not, therefore, appear that the differences observable between the fur-seals and those other animals commonly designated as wild, which are held by the municipal law of all nations to be the subject of ownership, are *material*, and the conclusion is fully justified that if the latter are property, the former must also be property.

But there is another and broader line of inquiry, by following which all doubt upon this point may be removed. What are the grounds and reasons upon which the institution of property stands? Why is it that society chooses to award, through the instrumentality of the law, a right of property in anything? Why is it that it makes any distinction in this respect between wild and tame animals; and why is it that, as to animals commonly designated as wild, it pronounces some to be the subjects of property and denies that quality to others? It can not be that these important but differing determinations are founded upon arbitrary reasons. Nor does the imputation to some of these animals of what is termed the *animus revertendi*, or the fact that they have a habit of returning which evidences that intent, of themselves, explain anything. They would both be wholly unimportant unless they were significant of some weighty social and economic considerations arising out of imperious social necessities. If we knew what these reasons were, we might no longer entertain even a doubt upon the question whether the Alaskan seals are the subjects of property. If it should appear upon inquiry that every reason upon which bees, or deer, or pigeons, or wild geese, and swans are held to be property requires the same determination in respect to the Alaskan seals, the differences observable between these various species of animals must be dismissed as wholly unimportant and the conclusion be unhesitatingly received that the fur-seals are the subjects of ownership.

The attention of the tribunal is, therefore, invited to a somewhat careful inquiry into the original causes of the institution of property and the principles upon which it stands; and the counsel for the United States will be greatly disappointed if the result of the investigation should fail to satisfy the Tribunal that there is a fundamental principle underlying that institution which is decisive of the main question now under discussion. That principle they conceive to be this, *that whenever any useful wild animals so far submit themselves to the control of particular men as to enable them exclusively to cultivate such animals and obtain the annual increase for the supply of human wants, and at the same time to preserve the stock, they have a property in them*, or, in other words, whatever may be justly regarded as the product of human art, industry, and self-denial must be assigned to those who make these exertions as their merited reward.

The inquiry thus challenged is in no sense one of abstract speculation, nor is it a novel one. It proceeds upon the firm basis of the facts of man's nature, the environment in which he is placed, and the social necessities which determine his action; and the pathway is illumined by the lights thrown upon it by a long line of recognized authorities. The writers upon the law of Nature and Nations, beginning with Grotius,[1] have justly conceived that no system of practical ethics would be complete which did not fully treat of the institution of property, not only in respect to nations, but also in respect to private persons. Recognizing the fact that a nation could not defend its possessions against other nations by an appeal to any municipal law, they have sought to find grounds for the defence of those possessions in the law of nature which must be everywhere acknowledged. It is upon the broad, general principles agreed to by these authorities that we shall endeavour to establish the proposition above stated.

It is easier to feel than it is to precisely define the meaning of the word *property;* but as the feeling is substantially the same in all minds there is the less need of any attempt at exact definition. It is commonly said to be the right to the exclusive possession, use, and disposition of the thing which is the subject of it; but this defines rather the *right* upon which property rests, than property itself. The somewhat abstract definition of Savigny more precisely states what property really is. "Property," says he, "according to its true nature, is a widening of individual power."[1] It is, as far as tangible things are concerned, an extension of the individual to some part of the material world, so that it is affected by his personality.[2]

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[1] Grotius, de Jure Belli ac Pacis, Book 2, Chap. 2; Puffendorf, Law of Nature and Nations, Book 4, Chap. 5. See also Blackstone's elegant chapter on "Property in General" (Commentaries, Book 2, pp. 1, *et seq.*); and Locke on Civil Government, Chap. 5.

But whence comes the *right* of the individual to thus extend his power over the natural world, and what are its conditions and limitations? In thus speaking of rights, *moral* rights alone are intended for the law knows of no other, if, indeed, any other exist. There are no natural indefeasible rights which stand for their own reason. If rights exist, it is not for themselves alone, but because they subserve the happiness of mankind and the purposes for which the human race was placed upon the earth. Even the right to life, however clear in general, is not natural and indefeasible. It is held subject to the needs of mankind, and in a great number of cases may be justly taken by society. In order to ascertain the source and foundation of the right of property, we must look, as all moralists and jurists look, to the nature of man and the environment in which he is placed. We find that the desire of exclusive possession is one of the original and principal facts of man's nature which will and must be gratified, even though force be employed to vindicate the possession. We know, also, that man is a social animal and must live in *society*, and that there can not be any society without order and peace. Even in savage life it is a necessity that the hunter should have the exclusive ownership of the beast he has slain for food and of the weapon he has made for the chase. Otherwise life itself could not be maintained. His rude society, even, is not possible unless it furnishes him with some guaranty that these few possessions be secured to him. Otherwise he is at war with his species, and society is gone. The existence of property, to at least this extent, is coeval with the existence of man. It stands upon the imperious and indisputable basis of *necessity*. "Necessity begat property."[1] Neither history, nor tradition, informs us of any people who have inhabited the earth among whom the right of property to at least this extent was not recognized and enforced. And an interesting confirmation is found in the circumstance that the rude originals of the administration of justice are everywhere found in contrivances designed for punishment of theft.

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[1] Jurid. Relations (Lond., 1834, Ratteguin's Trans.), p. 178.

[2] Locke expresses the same idea: "The fruit or venison which nourishes the wild Indian * * * must be his, and so his, *i.e.*, *a part of him*, that another can no longer have any right to it," etc. (Civil Government, Chap. 5, § 25.)

"In making the object my own I stamped it with the mark of my own person; whoever attacks it attacks me; the blow struck it strikes me, for I am present in it. Property is but the periphery of my person extended to things." Ihering, quoted by George B. Newcomb, Pol. Science Quarterly, Vol. I, p. 604.

The circumstance that in the early advances of society from savage to industrial conditions we find that in many things, especially land and the products of land, *community* property is found to obtain in place of individual property, does not impair in any degree the force of the views just expressed. The institution of property is in full operation, whether society itself—the artificial person—asserts ownership, or permits its members to exercise the privilege. Wherever the supreme necessities of society, peace and order, are found to be best subserved by ownership in the one form rather than in the other, the form most suitable will be adopted. Community property was found sufficient for the early stages of society, and it is the anticipation, or the dream, of many ingenious minds that the expedient will again, in the further advance of society, be found necessary.

But the desire of human nature for exclusive ownership is not limited to the weapons and product of the chase, as in savage society, or to the reward of a proportional share, as in early industrial communities. Man wishes for more, for the sake of the comfort, power, consideration and influence which abundant possessions bring. He wishes to better his condition, and this is possible only by increase of possessions. And the improvement of society, it has been found, can be effected, or best effected, only through the improvement of its individual members. This desire of individual man to better his condition is imperious, and must be gratified; and inasmuch as the gratification tends to general happiness and improvement, a moral basis is furnished for an extension of the institution of individual property. As the first necessity of the social state, peace and order, require that ownership should be enforced to at least the limited extent which savage conditions require, so the second necessity of society, its progress and advancement—that is to say, civilization—demands that individual effort should be encouraged by offering as its reward the exclusive ownership of everything which it can produce. In these two principal necessities of human condition, the peace of society, and its progress and advancement in wealth and numbers, both founded upon the strongest desires of man's nature, the institution of property has its foundation.

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[1] Blackstone's Com., Book 2, p. 8.

There are several features of this institution which in this discussion should be well understood and carried in mind; and, first, the extent of its operation. Manifestly this must be coextensive with the human desires and necessities out of which it springs. Wherever there is an object of desire, not existing in sufficient quantity to fully satisfy the greed of all, conflict for possession will arise and consequent danger to peace. Society finds its best security for order in extending the privilege of ownership *to everything which can be owned.* The owner may be the state or community, as under early and rude social conditions; or private individuals, as civilization advances; but, in either case, nothing is left as a subject for strife. The grounds and reasons which society, after the introduction of individual property, may allow as sufficient for awarding ownership to one rather than to another are various; but they all depend upon some consideration of superior merit and desert. That one man has by his labor and skill formed a weapon or a tool is instantly recognized as a sufficient ground to support his title to it. And if he simply takes possession of some things before unappropriated by any one, or finds property to which no other owner asserts a claim, his right, though less impressive, is still superior to that of any other. We therefore easily reach the conclusion that the necessities which demand the institution of property equally demand its extension over every object of desire as to which conflict for possession may arise.

But it is not only the necessity of peace and order which requires that all-embracing extent of the institution of property. It is alike demanded by that high moral purpose already alluded to as constituting part of the foundation of the institution, namely, the improvement of society and of the individual man. This, as has already been seen, can be brought about only by the cultivation of the arts of industry by which nature is made to yield a more abundant provision for human wants. These arts will not be practiced unless the fruits of each man's labor, whether it be the product of the field, of the workshop, or the increase of animals which are the subject of his care, are assured to him. We find, therefore, that the institution of property is so imbedded in the nature of man, that its existence is a necessary consequence of forces in operation wherever man is found, or wheresoever his power may extend, and that the fundamental formula by which the institution is expressed is that every object of desire, *of which the supply is limited*, must be owned. It is with this proposition that Blackstone closes his chapter upon "Property in General."

> "Again, there are other things in which a permanent property may subsist, not only as to the temporary use, but also the solid substance; and which yet would frequently be found without a proprietor had not the wisdom of the law provided a remedy to obviate this inconvenience. Such are forests and other waste grounds, which were omitted to be appropriated in the general distribution of lands. Such also are wrecks, estrays, and that species of wild animals which the arbitrary constitutions of positive law have distinguished from the rest by the well known appellation of game. With regard to these and some others, as disturbances and quarrels would frequently arise among individuals, contending about the acquisition of this species of property by first occupancy, the law has therefore wisely cut up the root of dissension by vesting the things themselves in the sovereign of the State, or else in his representatives appointed and authorized by him, being usually the lords of manors. And thus the legislature of England has universally promoted the grand ends of civil society, the peace and security of individuals, by steadily pursuing *that wise and orderly maxim of assigning to everything capable of ownership a legal and determinate owner*."[1]

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[1] Sir Henry Maine, after tracing with his wonted acuteness the course of the development of the conception of property, also finds that it finally results in the proposition that everything must be owned.

"It is only when the rights of property gained a sanction from long practical inviolability, and when the vast majority of objects of enjoyment have been subjected to private ownership, that mere possession is allowed to invest the first possessor with dominion over commodities in which no prior proprietorship has been asserted. The sentiment in which this doctrine originated is absolutely irreconcilable with that infrequency and uncertainty of proprietary rights which distinguish the beginning of civilization. The true basis seems to be not an instinctive bias towards the institution of property, but a presumption, arising out of the long continuance of that institution, that *everything ought to have an owner*. When possession is taken of a '*res nullius*,' that is, of an object which is not, or has never, been reduced to dominion, the possessor is permitted to become proprietor from a feeling that all valuable things are naturally subjects as an exclusive enjoyment, and that in the given case there is no one to invest with the rights of property except the occupant. The occupant, in short, becomes the owner, because all things are presumed to be somebody's property, and because no one can be pointed out as having a better right than he to the proprietorship of this particular thing." (Ancient Law, Ch. 8, p. 249.)

Lord Chancellor Chelmsford made the proposition that everything must be owned by some one, the ground of his decision in the House of Lords of the case of Blades v. Higgs. (Law Journal Reports, N.S., 286, 288.)

From Commentaries on the Constitutional Law of England. By George Bowyer, D. C. L., 2d ed. London, 1846, p. 427:

"III. The third primary right of the citizen is that of property, which consists in the free use, enjoyment, and disposal of all that is his, without any control or diminution, save by the law of the land. The institution of property—that is to say, the appropriation to particular persons and uses of things which were given by God to all mankind—is of natural law. The reason of this is not difficult to discover, for the increase of mankind must soon have rendered community of goods exceedingly in-

Nothing which is not an object of human desire—that is, nothing which has not a recognized utility—can be the subject of property, for there is no possibility of conflict for the possession. Property, therefore, is not predicable of noxious reptiles, insects, or weeds, except under special circumstances, where they may be kept for the purposes of science or amusement. The supply, indeed, may be limited; but the element of utility, which excites the conflicting desires which property is designed to reconcile and restrain, is absent. Nor is property predicable of things which, though in the highest degree useful, exist in inexhaustible abundance and within the reach of all. Neither air nor light nor running water are the subjects of property. The supply is unlimited, and where there is abundance to satisfy all desires there can be no conflict.

There is a still further qualification of the extent to which the institution of property is operative. Manifestly, in order that a thing may be owned, it must be *susceptible of ownership*, that is, of exclusive appropriation to the power of some individual. There are things of which this can not be asserted. Useful wild animals are the familiar instance. Although objects of desire and limited in supply, they are not, as a general rule, susceptible of exclusive appropriation. They are not subject, otherwise than by capture and confinement, to the constant disposition of man as he may choose to dispose of them. We can hold them only by keeping them in captivity, and this we can do only in respect to an insignificant part. *What in the view of the law constitutes this susceptibility of exclusive appropriation* is an interesting and important question, which will be hereafter discussed in connection with the question what animals are properly to be denominated as wild.

The importance of the conclusion reached by the foregoing reasoning should be marked by deliberate restatement. The institution of property embraces all tangible things subject only to these three excepting conditions:

First. They must have that *utility* which makes them objects of human desire.

Second. The supply must be limited.

Third. They must be susceptible of exclusive appropriation.

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convenient or impossible consistently with the peace of society; and, indeed, by far the greater number of things can not be made fully subservient to the use of mankind in the most beneficial manner unless they be governed by the laws of exclusive appropriation."

This conclusion is a deduction of moral right drawn from the facts of man's nature and the environment in which he is placed; in other words, it is a conclusion of the law of nature; but this, as has been heretofore shown, is international law, except so far as the latter may appear, from the actual practice and usages of nations, to have departed from it, or, to speak more properly, not to have risen to it.

Turning to the actual practice of nations, that is, to the observed fact, we find that it is in precise accordance with the deductive conclusion. No tangible thing can be pointed out, which exhibits the conditions above stated, which is not by the jurisprudence of all civilized nations pronounced to be the subject of property, and protected as such. This seems so manifest as to justify a confidence that the assertion will not be disputed.

In the foregoing reasoning no distinction has been observed between ownership by private individuals under municipal law, and by nations under international law. There is no distinction. Nations are but aggregates of individual men. They exhibit the same ambitions, are subject to like perils, and must resort for safety and peace to similar expedients. Just as it is necessary to the peace, order, and progress of municipal societies that everything possessing the three characteristics above enumerated should be owned by some one, so also it is necessary to the peace, order, and progress of the larger society of nations that everything belonging to the same class, but which from its magnitude is incapable of individual ownership, should be owned by some nation. This truth is well illustrated by the practice of nations for the last four centuries in acknowledging as valid titles to vast tracts of the earth's surface upon no other foundation than first discovery. Nearly the whole of the American continents was parceled out among European nations by the recognition of claims based upon such titles alone.[1]

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[1] The practice and doctrine of European nations upon this subject are clearly set forth by Mr. Chief Justice Marshall, in delivering the opinion of the Supreme Court of the United States in Johnson *vs.* McIntosh (8 Wheat., 543, 572). A short extract will be pertinent here:

"As the right of society to prescribe those rules by which property may be acquired and preserved is not, and can not be, drawn into question; as the title to lands, especially, is, and must be admitted, to depend entirely on the law of the nation in which they lie, it will be necessary, in pursuing this inquiry, to examine, not simply those principles of abstract justice which the Creator of all things has impressed on the mind of his creature, man, and which are admitted to regulate in a great degree the rights of civilized nations, whose perfect independence has been acknowledged, but those principles also which our own Government has adopted in the particular case, and given as the rule of decision.

"On the discovery of this immense continent, the great nations of Europe were

And, for the most part, the vast territories thus acquired were not even seen. The maritime coasts only were explored, and title to the whole interior, stretching from ocean to ocean, or at least to the sources of the rivers emptying upon the coasts explored, was asserted upon the basis of this limited discovery. Some limitations were placed upon these vast claims resulting from conflicts in the allegations of priority; but, for the most part, the effectiveness of first discovery in giving title to great areas which had not been even explored was recognized. If the mere willing by the first discoverer that things susceptible of appropriation should be his property was held sufficient to make them so, it could only have been from a common conviction that ownership of every part of the earth's surface by some nation was so essential to the general peace and order, that it was expedient to recognize the slightest moral foundation as sufficient to support a title. The principle has been extended to vast territories which are even incapable of human occupation. The titles of Great Britain to her North American territory extending to the frozen zone, and of the United States derived from Russia to the whole territory of Alaska have never been questioned.

### THE FORM OF THE INSTITUTION —COMMUNITY AND PRIVATE PROPERTY.

But although the existence of human society involves and necessitates the institution of property, it does not determine the *form* which that institution assumes. The necessity that all things susceptible of ownership should be owned is one thing; but who the owner shall be

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eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent afforded an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing upon them civilization and Christianity, in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary in order to avoid conflicting settlements, and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the governments by whose subjects, or by whose authority it was made, against all other European governments, which title might be consummated by possession. The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which by others all assented."

is another. As has already been pointed out, the absolute necessities of rude society may be satisfied by making society itself the universal owner; which is the condition actually presented by some very early communities; but individual ownership is the condition found in all societies which have reached any considerable degree of advancement. This matter of the form of the institution is, of course, determined in a municipal society by its laws; and these are in turn determined by its *morality*. Ownership is awarded in accordance with the sense of right and fitness which prevails among the members of society. It is this which determines its will, and its will is its law.

In seeking for the moral grounds upon which to make its award of the rights of private ownership that which is first and universally accepted is what may be called *desert*. "*Suum cuique tribuere*," lies as an original conception at the basis of all jurisprudence. In respect to *land* indeed, an original grant may be required from the community or the sovereign; but whatever a man *produces* by his *labor*, or *saves* by the practice of *abstinence*, is justly reserved for his exclusive use and benefit. This is the principle upon which the right of private property is by the great majority of jurists placed; and it is often, somewhat incorrectly perhaps, made the foundation of the institution of property itself. In our view a distinction is observable between the institution itself and the form which it assumes. The first springs from the necessity of peace and order, society not being possible without it; but when private property, which is also the result of another necessity, namely, the demands of civilized life, becomes the form which the institution assumes, the principle of *desert* comes into operation to govern the award.

### OWNERSHIP NOT ABSOLUTE.

But what is the *extent* of the dominion which is thus given by the law of nature to the owner of property? This question has much importance in the present discussion and deserves a deliberate consideration.

In the common apprehension the title of the possessor is absolute, and enables him to deal with his property as he pleases, and even, if he pleases, to destroy it. This notion, sufficiently accurate for most of the common purposes of life, and for all controversies between man and man, is very far from being true. No one, indeed, would assert that he had a *moral* right to waste or destroy any useful thing; but this limitation of power is, perhaps, commonly viewed as a mere moral or religious precept, for the violation of which man is responsible only to his Maker, and of which human law takes no notice. The truth is far otherwise. This precept is the basis of much municipal law, and has a widely-reaching operation in international jurisprudence. There are two propositions belonging to this part of our inquiry, closely connected with each other, to which the attention of the Arbitrators is particularly invited. They will be found to have a most important, if not a wholly decisive, bearing upon the present controversy.

First. No possessor of property, whether an individual man, or a nation, has an absolute title to it. His title is coupled with a trust for the benefit of mankind.

Second. The title is further limited. The things themselves are not given him, but only the *usufruct* or *increase*. He is but the custodian of the stock, or principal thing, holding it in trust for the present and future generations of man.

The first of these propositions is stated almost in the language employed by one of the highest authorities on the law of nature and nations. Says Puffendorf, "God gave the world, not to this, nor to that man, but to the human race in general."[1] The bounties of nature are gifts not so much to those whose situation enables them to gather them, but to those who need them for *use*. And Locke, "God gave the world to men in common."[2] If it be asked how this gift in common can be reconciled with the exclusive possession which the institution of property gives to particular nations and particular men, the answer is by the instrumentality of commerce which springs into existence with the beginnings of civilization as a part of the order of nature. Indeed it is only by means of commerce that the original *common gift* could have been made effectual as such. Every bounty of nature, however it may be gathered by this, or that man, will eventually find its way, through the instrumentality of commerce, to those who want it for its inherent qualities. It is for these, wherever they may dwell, that it is destined. Were it not for these the bounty would be of little use even to those whose situation enables them to control it and to gather it. But for commerce, and the exchanges effected by it, the greatest part of the wealth of the world would be wasted, or unimproved.[3] The Alaskan seals, for instance, would be nearly valueless. A few hundreds, or thousands at the most, would suffice to supply all the needs of the scanty population living on the islands where they are found, or along the shores of the seas through which they pass in their migrations. Indeed, the Pribilof Islands would never have been inhabited, or even visited, by man except for the purpose of capturing seals in order to supply the demands of distant peoples. The great blessing to mankind at large capable of being afforded by this animal would have been wholly unrealized. The sole condition upon which its value depends, even to those who pursue and capture it, is that they are able, by exchanging it for the products of other and distant nations, to furnish themselves with many blessings which they greatly desire.

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[1] Law of Nature and Nations. Book 4, Chap. 5, sec. 9.

[2] Civil Government, Chap. 5, § 34.

[3] "Wherewith accords that of Libanius, God, saith he, hath not made any one part of the world the storehouse of all his blessings, but hath wisely distributed them

This truth that nature intends her bounties for those who need them, wherever they may dwell, may be illustrated and made more clear by inquiring upon whom the loss would fall if the gift were taken away Take, for instance, the widely used and almost necessary article of India rubber. It is produced in but few and narrowly-limited areas, and we may easily suppose that by some failure of nature, or misconduct of man, the production is arrested. A loss would, no doubt, be felt by those who had been engaged in gathering it and exchanging it for other commodities; and a still more extensive one would fall upon the largely greater number whose labor was applied in manufacturing it into the various forms in which it is used; but the loss to both these classes would be but temporary. The cultivators could raise other products, and the manufacturers could employ their industry in other fields. The opportunities which nature offers for the employment of labor are infinite and inexhaustible, and the only effect of a cessation of one industry is to turn the labor devoted to it into other channels. But the loss to the consumers of the article, the loss of those who need that particular thing, would be absolute and irreparable.

If these views are well founded it follows that, by the law of nature, every nation, so far as it possesses the fruits of the earth in a measure more than sufficient to satisfy its own needs, is, in the truest sense, a

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through all nations, that so each needing another's help he might thereby lead men to society; and to this end he discovered unto them the art of merchandising, that so whatsoever any nation produced might be communicated unto others." * * * So Theseus speaks very pertinently—

"What to one nation nature doth deny,
That she, from others, doth by sea supply."

(Grotius; De Jure Belli ac Pacis, Book 2, Chap. 2, § 13.) See also Phillimore, International Law, Vol. I, p. 261, 262.

*trustee* of the surplus for the benefit of those in other parts of the world who need them, and are willing to give in exchange for them the products of their own labor; and the truth of this conclusion and of the views from which it is drawn will be found fully confirmed by a glance at the approved usages of nations. It is the characteristic of a trust that it is *obligatory*, and that in case of a refusal or neglect to perform it, such performance may be compelled, or the trustee removed and a more worthy custodian selected as the depository of the trust. It is an admitted principle of the law of nature that commerce is obligatory upon all nations; that no nation is permitted to seclude itself from the rest of mankind and interdict all commerce with foreign nations. Temporary prohibition of commerce for special reasons of necessity are, indeed, allowed; but they must not be made permanent.[1]

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[1] The instrumentality of commerce as a part of the scheme of nature in securing to mankind in general the enjoyment of her various gifts, in whatsoever quarter of the earth they may be found, has been pointed out by many writers upon the law of nature and nations. A few citations will be sufficient, the views in which all concur. It will appear from those which are herein furnished—

1. That man does not begin to desire the benefit of the gifts to be found in other lands and in which he is entitled to share until he has made some advances towards civilization, and, consequently, commerce may be said to be the offspring of civilization.

2. But it reacts upon and greatly stimulates the cause from which it springs, so that civilization may also be said to be the fruit of commerce.

3. In its relations to civilization it is like the division of labor and has sometimes been styled "the *territorial* division of labor."

4. Doubtless there is a large discretion which each nation may justly exercise in respect of the conditions under which it will engage in commerce with other nations. But an absolute or unreasonable refusal is in clear violation of natural law. It is a denial by the refusing nation of the fundamental truth that the bounties of nature were bestowed upon mankind.

From "Des Droits et des Devoirs des Nations Neutres en Temps de Guerre Maritime," par L. B. Hautefeuille. Paris, 1848. Vol. I, p. 256:

"The Sovereign Master of nature did not confine himself to giving a particular disposition to every man; he also diversified climates and the nature of soils. To each country, to each region, he assigned different fruits and special productions, all or nearly all of which were susceptible of being used by man and of satisfying his wants or his pleasures. Almost all regions doubtless produced what was indispensable for the sustenance of their inhabitants, but not one produced all the fruits that were necessary to meet all real needs, or more particularly all conventional needs. It was, therefore, necessary to have recourse to other nations and to extend commerce. Man, impelled by that instinct which leads him to seek perfection, created new needs for himself as he made new discoveries. He accustomed himself to the use of all the productions of the earth and of its industry. The cotton, sugar, coffee, and tobacco of the New World have become articles of prime necessity for the European, and an immense trade is carried on in them. The American, in turn, can not dispense with the varied productions of European manufacture. The development of commerce, that is to say, the satisfaction of man's instincts of sociability and perfectibility, has greatly contributed to connecting all the nations of the universe; it has served as a vehicle, A sure guaranty for the observance of this trust obligation is found in the imperious and universal motive of self-interest. The desire of civilized man to gratify his numerous wants and to better his condition so strongly impels him to commerce with other nations that no other inducement is in general needed. The instances in history are rare in which nations have exhibited unwillingness to engage in commercial intercourse; but they are possible under peculiar conditions, and have sometimes actually occurred. Such a refusal is generally believed to have been the real, though it was not the avowed, cause of the war waged by Great Britain against China in 1840.

For the purposes of further illustration, a case may be imagined stronger than any of the actual instances referred to. Let it be supposed that some particular region from which alone a commodity deemed

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so to speak, for the performance of the duties of humanity. Commerce is really, therefore, an institution of primitive law; it has its source and its origin in the divine law itself."

From Vattel (7th Amer. Ed., 1849, Book 2, Chap. 2, sec. 21, p. 143):

"SEC. 21. All men ought to find on earth the things they stand in need of. In the primitive state of communion they took them wherever they happened to meet with them if another had not before appropriated them to his own use. The introduction of dominion and property could not deprive men of so essential a right, and, consequently, it can not take place without leaving them, in general, some means of procuring what is useful or necessary to them. This means commerce; by it every man may still supply his wants. Things being now become property, there is no obtaining them without the owner's consent, nor are they usually to be had for nothing, but they may be bought or exchanged for other things of equal value. *Men are, therefore, under an obligation* to carry on that commerce with each other if they wish not *to deviate from the views of nature*, and this obligation extends also to *whole nations or states.* It is seldom that nature is seen in one place to produce everything necessary for the use of man; one country abounds in corn, another in pastures and cattle, a third in timber and metals, etc. If all those countries trade together, as is agreeable to human nature, no one of them will be without such things as are useful and necessary, and the views of nature, our common mother, will be fulfilled. Further, one country is fitter for some kind of products than for another, as, for instance, fitter for the vine than for tillage. If trade and barter take place, every nation, on the certainty of procuring what it wants, will employ its lands and its industry in the most advantageous manner, and mankind in general prove gainers by it. Such are the foundations of the general obligations incumbent on nations reciprocally to cultivate commerce."

From "Leçons de Droit de la Nature et des Gens," par M. le Professeur Félice, Vol. II. (Droit des Gens). Paris, 1830. Leçon XVII, page 293:

"The need of this exchange is based upon the laws of nature and upon the wise arrangement which the Supreme Being has established in the world, each region and each portion of which furnishes, indeed, a great variety of productions, but also lacks certain things required for the comfort or needs of man; this obliges men to exchange necessary by man everywhere, such as Peruvian bark, could be procured, was within the exclusive dominion of a particular power, and that it should absolutely prohibit the exportation of the commodity; could there be any well-founded doubt that other nations would be justified, under the law of nature, in compelling that nation by arms to permit free commerce in such commodity?

And this trust, of which we are speaking, is not limited to that surplus of a nation's production which is not needed for its own wants, but extends to its means and capabilities for production. No nation has, by the law of nature, a right to destroy its sources and means of production or leave them unimproved. None has the right to convert any portion of the earth into a waste or desolation, or to permit any part which may be made fruitful to remain a waste. To destroy the source from which any human blessing flows is not merely an error, it

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their commodities with each other and to form bonds of friendship, whereas, otherwise, their passions would impel them to hate and destroy each other. * * *

"The law of commerce is therefore based upon the obligation under which nations are to assist each other mutually, and to contribute, as far as lies in their power, to the happiness of each other."

From Levi (International Commercial Law, 2d ed., 1863. Vol. I, Preface, pp. xxxix, xl):

* * * "Commerce is a law of nature, and the right of trading is a natural right.(*) But it is only an imperfect right, inasmuch as each nation is the sole judge of what is advantageous or disadvantageous to itself; and whether or not it be convenient for her to cultivate any branch of trade, or to open trading intercourse with any one country. Hence it is that no nation has a right to compel another nation to enter into trading intercourse with herself, or to pass laws for the benefit of trading and traders. Yet the refusal of this natural right, whether as against one nation only, or as against all nations, would constitute an offense against international law, and it was this refusal to trade, and the exclusion of British traders from her cities and towns, that led to the war with China.

From Halleck (International Law (Ed. 1861), Chap. 11, sec. 13, p. 280):

"SEC. 13. To this right of trade there is a corresponding duty of mutual commerce, founded on the general law of nature; for, says Vattel, 'one country abounds in corn, another in pastures and cattle, a third in timber and metals; all these countries trading together, agreeably to human nature, no one will be without such things as are useful and necessary, and the views of nature, our common mother, will be fulfilled. Further, one country is fitter for some kind of products than another; as for vineyards more than tillage. If trade and barter take place, every nation, on the certainty of procuring what it wants, will employ its industry and its ground in the most advantageous manner, and mankind in general proves a gainer by it. Such are the foundations of the general obligation incumbent on nations reciprocally to cultivate commerce. Therefore, everyone is not only to join in trade as far as it reasonably can, but even to countenance and promote it.'"

Reddie (Inquiries into International Law), 2d Ed. 1851, Chap. 5, Part II, sub sec. 2, Art. 2, p. 207):

"But the chief source of the intercourse of nations in their individual capacity is is a *crime.* And the wrong is not limited by the boundaries of nations, but is inflicted upon those to whom the blessing would be useful wherever they may dwell. And those to whom the wrong is done have the right to redress it.

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* Vattel, Book 1, Chap. 8, sec. 88.

Let the case of the article of India rubber be again taken for an illustration, and let it be supposed that the nation which held the fields from which the world obtained its chief supply should destroy its plantations and refuse to continue the cultivation, can it be doubted that other nations would, by the law of nature, be justified in taking possession by force of the territory of the recreant power and establishing over it a governmental authority which would assure a continuance of the cultivation? And what would this be but a removal of the unfaithful trustee, and the appointment of one who would perform the trust?[1]

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the exchange of commodities, or natural or artificial production. The territory of one State very rarely produces all that is requisite for the supply of the wants, for the use and enjoyment of its inhabitants. To a certain extent one State generally abounds in what others want. A mutual exchange of superfluous commodities is thus reciprocally advantageous for both nations. And, as it is a moral duty in individuals to promote the welfare of their neighbor, it appears to be also the moral duty of a nation not to refuse commerce with other nations when that commerce is not hurtful to itself."

From Kent (Commentaries on American Law. (The Law of Nations, Part 1.) Ed. 1866. Chap. 2, p. 117):

"As the aim of international law is the happiness and perfection of the general society of mankind, it enjoins upon every nation the punctual observance of benevolence and good will, as well as of justice toward its neighbors. This is equally the policy and the duty of nations. They ought to cultivate a free intercourse for commercial purposes, in order to supply each other's wants and promote each other's prosperity. The variety of climates and productions on the surface of the globe, and the facility of communication by means of rivers, lakes, and the ocean, invite to a liberal commerce, as agreeable to the law of nature, and extremely conducive to national amity, industry, and happiness. The numerous wants of civilized life can only be supplied by mutual exchange between nations of the peculiar productions of each."

[1] Cases in which nations have supposed themselves justified in *interfering* with the territory and affairs of other nations have frequently occurred. The war celebrated in Grecian history as the first Sacred War was an early and illustrative instance growing out of the religious sentiment. The temple of Apollo at Delphi was the principal shrine in the religion of Greece. It was within the territory of the state of Krissa whose people had desecrated by cultivation the surroundings of the spot where it was situated, and by levying tolls and other exactions had obstructed the pilgrimages which the votaries of the god were wont to make. A large part of Greece arose to punish this violation of the common right, and in a war of ten years' duration destroyed the town of Krissa, and consecrated the plain around the temple to the service of the god by decreeing that it should forever remain untilled and unplanted. (Grote, History of Greece, Lond., 1847, Vol. IV, p. 84.) China has furnished one of the few instances in modern times of unwillingness to engage in foreign commerce. This was not the avowed but was probably one of the real causes of the war waged against that nation by Great Britain in 1840.

It, is, indeed, upon this ground, and this ground alone, that the conquest by civilized nations of countries occupied by savages has been, or can be, defended. The great nations of Europe took possession by force and divided among themselves the great continents of North and South America. Great Britain has incorporated into her extensive empire vast territories in India and Australia by force, and against the will of their original inhabitants. She is now, with France and Germany as rivals, endeavoring to establish and extend her dominion in the savage regions of Africa. The United States, from time to time, expel the native tribes of Indians from their homes to make room for their own people. These acts of the most civilized and Christian nations are inexcusable robberies, unless they can be defended, under the law of nature, by the argument that these uncivilized countries were the gifts of nature to man, and that their inhabitants refused, or were unable, to perform that great trust, imposed upon all nations, to make the capabilities of the countries which they hold subservient to the needs of man. And this argument is a sufficient defense, not indeed for the thousand excesses which have stained these conquests, but for the conquests themselves.

The second proposition above advanced, namely, that the title which nature bestows upon man to her gifts is of the *usufruct* only, is, indeed, but a corollary from that which has just been discussed, or rather a part of it, for in saying that the gift is not to this nation or that, but to mankind, all generations, future as well as present, are intended. The earth was designed as the permanent abode of man through ceaseless generations. Each generation, as it appears upon the scene, is entitled only to *use* the fair inheritance. It is against the law of nature that any waste should be committed to the disadvantage of the succeeding tenants.[1] The title of each generation may be described in a term familiar to English lawyers as limited to an estate for life; or it may with equal propriety be said to be coupled with a trust to transmit the inheritance to those who succeed in at least as good a condition as it was found, reasonable use only excepted. That one generation may not only consume or destroy the annual increase of the products of the earth, but the stock also, thus leaving an inadequate provision for the multitude of successors which it brings into life, is a notion so repugnant to reason as scarcely to need formal refutation. The great writers upon the law of nature and nations properly content themselves with simply affirming, without laboring to establish, these self-evident truths.

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[1] Since the power of man over things extends no further than to use them accordingly as they are in their nature usable, things are not matter for consideration in law except in regard to the use or treatment of which they are capable. Hence no right to things can exist beyond the right to use them according to their nature; and this right is Property. No doubt a person can wantonly destroy a subject of property, or treat it in as many ways which are rather an abuse than a use of the thing. But such abuse is wasteful and immoral; and that it is not at the same time illegal, is simply because there are many duties of morality which it is impossible, inexpedient, or unnecessary for the positive law to encorporate or enforce. I therefore define property to be the right to the exclusive *use* of a thing.

It will, perhaps, be objected to this that if gathering the acorns, or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will.

The obligation not to invade the stock of the provision made by nature for the support of human life is in an especial manner imposed upon *civilized* societies; for the danger proceeds almost wholly from them. It is commerce, the fruit of civilization, and which at the same time extends and advances it, that subjects the production of each part of the globe to the demands of every other part, and thus threatens, unless the tendency is counteracted by efficient husbandry, to encroach upon the sources of supply. The barbaric man with sparse numbers scattered over the face of the earth, with few wants, and not engaged in commerce, makes but a small demand upon the natural increase. He never endangers the existence of the stock, and neither has, nor needs, the intelligent foresight to make provision for the future. But with the advance of civilization, the increase in population, and the multiplication of wants, a peril of overconsumption arises, and along with it a development of that prudential wisdom which seeks to avert the danger.

The great and principal instrumentality designed to counteract this threatening tendency is the institution of *private individual property*, which, by holding out to every man the promise that he shall have the exclusive possession and enjoyment of any increase in the products of nature which he may effect by his care, labor, and abstinence, brings into play the powerful motive of self-interest, stimulates the exertion in every direction of all his faculties, both of mind and body, and

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To which I answer: Not so. The same law of nature that does by this means give us property, does also bound that property too. "God has given us all things richly," (1 Tim. vi, 17,) is the voice of reason confirmed by inspiration. But how far has he given it to us? To enjoy. As much as any one can make use to any advantage of life before it spoils, so much he may by his labor fix a property in. Whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. (S. Martin Leaks, Jurid. Soc. Papers, Vol. I, p. 532.)

thus leads to a prodigiously increased production of the fruits of the earth.

There are some provisions to this end which are beyond the power of private men to supply, or for supplying which no sufficient inducement can be held out to them, inasmuch as the rewards can not be secured to them exclusively; and here the self-interest of nations supplements and coöperates with that of individuals. A large share of the legislative policy of civilized states is devoted to making provision for future generations. Taxation is sought to be limited to the annual income of society. Permanent institutions of science are established for the purpose of acquiring a fuller knowledge of natural laws, to the end that waste may be restricted, the earth be made more fruitful, and the stock of useful animals increased. The destruction of useful wild animals is sought to be prevented by game laws, and the attempt is even made to restock the limitless areas of the seas with animal life which may be made subservient to man.

The same policy is observable in the ordinary municipal law of states. Whenever the possessor of property is incapable of good husbandry, and therefore liable to waste or misapply that part of the wealth of society which is confided to him, he is removed from the custody, and a more prudent guardian substituted in his place. Infants, idiots, and insane persons are deprived of the control of their property, and the state assumes the guardianship. This policy is adopted not merely out of regard to the private interests of the present owner, but in order also to promote the permanent objects of society by protecting the interests of future generations.

There are some exceptions, rather apparent than real, to the law which confines each generation to the increase or usufruct of the earth. Nature holds in some of her storehouses the slow accumulations of long preceding ages, which can not be reproduced by the agency of man. The products of the mineral kingdom, when consumed, can not be restored by cultivation. But here the operation of the institution of private property is still effective, by exacting the highest price, to limit the actual consumption to the smallest extent consistent with a beneficial use. Again, it is not possible to limit the consumption of useful wild birds to the annual increase; for they can not be made the subjects of exclusive appropriation as property, and consequently can not be increased in numbers by the care and abstinence of individual man. The motive of self-interest can not here be brought into play. But society still makes the only preservative effort in its power by restricting consumption through the agency of game laws.

So, also, in the case of fishes inhabiting the seas and reproducing their species therein. It is impossible to limit the extent to which they may be captured; but here nature, as if conscious of the inability of man to take care of the future, removes the necessity, in most cases, for such care by the enormous provision for reproduction which she makes. The possible necessity, however, or the wisdom of endeavoring to supplement the provision of nature, has already been taken notice of by man, and efforts are now in progress to prevent an apprehended destruction of the stock. The case of fishes resorting, for the purposes of reproduction, to interior waters, has, for a long time, engaged the attention of governments, and much success has followed efforts to make the annual increase adequate to human wants.

### SUMMARY OF DOCTRINES ESTABLISHED.

The foregoing discussion concerning the origin, foundation, extent, form, and limitations of the institution of property will, it is believed, be found to furnish, in addition to the doctrines of municipal law, decisive tests for the determination of the principal question, whether the United States have a property in the seal herds of Alaska; but it may serve the purposes of convenience to present, before proceeding to apply the conclusions thus reached, a summary of them in a concise form.

First. The institution of property springs from and rests upon two prime necessities of the human race:

1. The establishment of peace and order, which is necessary to the existence of any form of society.

2. The preservation and increase of the useful products of the earth, in order to furnish an adequate supply for the constantly increasing demands of civilized society.

Second. These reasons, upon which the institution of property is founded, require that every *useful* thing, the supply of which is *limited*, and which is capable of ownership, should be assigned to some legal and determinate owner.

Third. The extent of the dominion which, by the law of nature, is conferred upon particular nations over the things of the earth, is limited in two ways :

1. They are not made the absolute owners. Their title is coupled with a trust for the benefit of mankind. The human race is entitled to participate in the *enjoyment*.

2. As a corollary or part of the last foregoing proposition, the things themselves are not given; but only the *increase* or *usufruct* thereof.[1]

### APPLICATION OF THE FOREGOING PRINCIPLES TO THE QUESTION OF PROPERTY IN THE ALASKAN HERD OF SEALS.

In entering upon the particular discussion whether, upon the principles above established, the United States have a property interest in the seal herd, it is obvious that we must have in mind a body of facts which have not, as yet, been fully stated.

We were obliged, indeed, while showing that the seals must be regarded as the subjects of property under the settled and familiar rules of municipal law, to briefly point out that the question whether they were, under that law, the subjects of property depended upon their nature and habits, and not upon whether they were to be classed under one or the other of the vague and uncertain general divisions of *wild* and *tame;* and also that they had, as part of their nature and habits, all the essential qualities upon which that law had declared several other descriptions of animals commonly designated as wild to be, nevertheless, the subjects of property. But this brief description is not sufficient for the purposes of the broader argument upon which we are now engaged. We should have in mind a complete knowledge of every material fact connected with these animals.

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[1] In the foregoing discussion, which involves only the most general principles, and concerning which there is little controversy, we have avoided frequent reference to authorities in order not to interrupt the attention. But an examination of the authorities should not be omitted. To facilitate this, somewhat copious citations are gathered and arranged in the Appendix to this portion of the argument.

The first step, therefore, in the further progress of our argument must be to assemble more precisely and fully our information concerning the utility of these animals, their nature and habits, the modes by which they are pursued and captured, the danger of extermination to which they are exposed, from what modes of capture that danger arises, whether it is capable of being averted, and by what means. We ~~proceed,~~ therefore, to place before the learned Arbitrators a concise statement of the facts bearing upon these points.

And first, concerning their *utility*. That they belong to the class of useful animals is, of course, a conceded fact; but in this general admission the extent of the utility, the magnitude of the blessing which they bring to man, may not be adequately estimated. They are useful for food, and constitute a considerable part of the provision for this purpose which is available to many of the native tribes of Indians who inhabit the coast along which their migrations extend. They are absolutely necessary for this purpose to the small native population of the Pribilof Islands. These could not subsist if this provision were lost. They are useful for the oil which they afford; but their principal utility consists in their skins, which afford clothing, not only to the native tribes above mentioned, but, when prepared by the skill which is now employed upon them, furnish a garment almost unequaled for its comfort, durability, and beauty. There is, indeed, no part of the animal which does not subserve some human want. The eagerness with which it is sought, and the high price which the skins command in the markets of the world, are further proof of its exceeding utility. Its prodigious numbers, even after the havoc which has been wrought by the relentless war made upon it by man, exhibit the magnitude of the value of the species; and if we add to these numbers, as we justly may, the increase which would come if its former places of resort, which have been laid waste by destructive pursuit, should be again, by careful and protected cultivation, repeopled, the annual supply would exceed the present yield perhaps tenfold.

Leaving out of view here the unlawful character of the employment, we may say that there is a further utility in the employment given to human labor in the pursuit and capture of the animal and the manufacture of the skins. There are probably two thousand persons employed for a large part of the year in the taking of seals at sea, and a large number in the building of the vessels and making of the implements required in that occupation. A much larger number, principally inhabitants of Great Britain, are wholly employed in the preparation of the skins for market. The annual value of the manufactured product can scarcely be less than $5,000,000 or $6,000,000.

But this last mentioned utility, that which arises from the employment given to industry, is not absolute and permanent. If the industry were destroyed by the total destruction of the seals, some inconvenience would doubtless be felt before the labor could be diverted into other channels. It could, however, and would, be so diverted, and the loss would thus be repaired. But, as already observed, the case would be different with the loss inflicted upon those who *use* the skins. No substitute could supply this loss; nor would there be any corresponding gain. In the case of some useful wild animals, the American bison, for instance, which inhabit the earth and subsist upon its fruits, and which are necessarily exterminated by the occupation of the wild regions over which they roam, there is a more than compensating advantage in the more numerous herds of tamed animals which subsist upon the same food. But the seal occupies no soil which would otherwise be useful. The food upon which it subsists comes from the illimitable storehouses of the seas, and could not otherwise be made productive of any distinct utility.

We are next to take into more particular consideration the *nature and habits* of the seal, and the other circumstances above adverted to which enable us to measure the perils to which the existence of the race is exposed, and the means by which these may be best counteracted. It is here that we encounter, for the first time, any material contradiction and dispute in the evidence; and, inasmuch as it is in a high degree important that we should ascertain the precise truth upon these points, it should be clearly understood what evidence is really before the arbitrators, and what measure of credit and weight should be allowed to the different classes of evidence. Any critical and detailed discussion of the evidence, if incorporated into the body of the argument, might involve interruptions too much protracted in the chain of reasoning, and will, for that reason, be separately presented in appendices; but some general notion should be had at the outset of the relative importance of the various pieces of evidence.

First. There is a large body of *common knowledge* respecting the natural history of animals and the facts of animal life, which all intelligent and well educated minds are presumed to possess. In the absence of those facilities, such as municipal tribunals afford for the production and examination of witnesses, it is supposed by the undersigned that this common knowledge may, with large latitude, be deemed to be already possessed by the learned Arbitrators, and to be available in the discussion and decision of the controversy.

Second. In the next place this knowledge may be supplemented by an appeal to the authoritative writings of scientific and learned men, and also to the writings of trustworthy historians and of actual observers of the facts which they relate.

Third. The reports, both joint and separate, of the Commissioners appointed in pursuance of the ninth article of the Treaty, are, by the terms of the Treaty, *made* evidence, and were undoubtedly contemplated as likely to furnish most important and trustworthy information.

Fourth. The testimony of ordinary witnesses, actual observers of the facts to which they testify. This is contained in *ex parte* depositions, but must, notwithstanding, be received as competent. No mode having been provided by which witnesses could be subjected to cross-examination, these depositions must be accepted as belonging to the class of best obtainable evidence. The necessity of caution and scrutiny in the use of it is manifest; but it may be found to be of great value, depending upon the number of concurring voices, and the degree of intelligence and freedom from bias which may be exhibited.

Concerning the reports of the Commissioners, some observations are appropriate in this place. Their duties were defined in concise but very clear language in the ninth article of the Treaty, as follows:

> Each Government shall appoint two Commissioners to investigate, conjointly with the Commissioners of the other Government, all the facts having relation to seal life in Bering Sea, and the measures necessary for its proper protection and preservation.
>
> The four Commissioners shall, so far as they may be able to agree, make a joint report to each of the two Governments, and they shall also report, either jointly or severally, to each Government on any points upon which they may be unable to agree.

They found themselves unable to agree, except upon a very few points, the most important of which are expressed in the following language:

> 5. We are in thorough agreement that, for industrial as well as for other obvious reasons, it is incumbent upon all nations, and particularly upon those having direct commercial interests in fur-seals, to provide for their protection and preservation. * * *
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> 7. We find that since the Alaska purchase a marked diminution in the number of seals on and habitually resorting to the Pribilof Islands has taken place; that it has been cumulative in effect, and that it is the result of excessive killing by man.[1]

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[1] Case of the United States, p. 309.

These gentlemen were, some of them at least, men eminent in the world of science, and acknowledged experts upon the subject committed to them for examination. The language of the treaty simply called for their opinions and advice upon a question mainly scientific. What was the reason which prevented them from coming to an agreement? Was it that the question was a difficult and doubtful one upon which men of science might well differ? It would seem not. It is described in the joint report as being "considerable difference of opinion on certain fundamental propositions." What it really was appears from the separate Report of the Commissioners of the United States.[1] They conceived, as is therein stated by them, that the only subject which they were to consider was the facts relating to seal life in the Bering Sea, and what measures were necessary to secure its preservation. If there were any question of property, or international right, or political expediency, involved, it was, presumably, to be determined by others. They had no qualifications for such a task, and were not called upon to perform it. But the Commissioners of Great Britain took a different view. In that view the question of the respective national rights of Great Britain and the United States was one of "fundamental importance," and no measures were entitled to consideration which denied or ignored the supposed right of subjects of Great Britain to carry on pelagic sealing. Their understanding of the question upon which they were to give an opinion was not simply what measures were necessary to preserve the seals from extermination but what were the measures most effective to that end which could be devised *consistently with a supposed right on the part of nations generally to carry on pelagic sealing.* It is not surprising that no agreement could be reached. There was a radical difference of opinion between the Commissioners in respect to their functions. According to the views of the United States Commissioners, a question mainly scientific was submitted to them; but their associates on the part of Great Britain thought that legal and political questions were also submitted, or if not submitted, that they were bound to act upon the view that the range of their scientific inquiry was bounded and limited by assumptions which they were required to make respecting international rights; in other words, their functions were not those of scientific seekers for the truth, but diplomatic agents, intrusted with national interests, and charged with the duty of making the best agreement they could consistently with those interests.

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[1] *Ibid.*, pp. 316–318.

It seems very clear that this conception of their powers and functions was wholly erroneous. There were differences between Great Britain and the United States respecting the subject of pelagic seal hunting; but both nations were agreed that it was extremely desirable that the capture of seals should be so regulated, if possible, as to prevent the extermination of the species. It was extremely desirable to both parties to know one thing, and that was, whether any, and if any, what measures were *necessary* in order to prevent this threatened extermination. This was a mainly scientific question; but whether the measures which might be found to be thus necessary could be acceded to by both parties to the controversy was quite another question, the decision of which was lodged with the political representatives of the respective governments. If they should be prepared to accede to them, all difficulty would be removed. If they should not be able to agree, a tribunal was provided with power to determine what should be done, and the reports of the Commissioners were to be laid before it for its instruction.

Such being the view which the Commissioners of Great Britain took of their own functions, their report should be regarded as partaking of the same character, and such it appears to be upon inspection. There is in no part of it any purpose discernible to discover and reveal the true cause which is operating to diminish the numbers of the fur-seal, and to indicate the remedy, if any, which science points out. It is apparent throughout the report that its authors conceived themselves to be *charged with the defense* of the Canadian interest in pelagic sealing; and it consequently openly exhibits the character of a labored apology for that interest, particularly designed to minimize its destructive tendency, and to support a claim for its continued prosecution. This being its distinguishing feature, it is, with great respect, submitted that any weight to be allowed to it as evidence should be confined to the *statements of facts* which fell under the observation of its authors; that these should be regarded as the utterances of unimpeachable witnesses of the highest character, testifying, however, under a strong bias; and that the opinions and reasonings set forth in it should be treated with the attention which is usually accorded to the arguments of counsel, but as having no value whatever as *evidence.*

In thus pointing out the general character of the Report of the Commissioners of Great Britain, no reflection is intended upon its authors. Similar observations would be applicable to the Report of the United

States Commissioners had they taken the same view of their functions. Their conception, however, of the duties imposed upon them was widely different. They regarded themselves as called upon simply to ascertain the truth, whatever it might be, concerning "seal life in Behring Sea and the measures necessary for its proper protection and preservation." This seemed to them essentially a scientific inquiry, and not to embrace any consideration of national rights, or of the freedom of the seas—a class of questions which they would probably have deemed themselves ill qualified to solve. They are not, indeed, to be presumed to be less interested in behalf of their own nation than their associates on the side of Great Britain; but as they did not conceive themselves charged with the duty of protecting a supposed national interest, they could remember that science has no native country, and that they could not defend themselves, either in their own eyes, or before their fellows of the scientific world, if they had allowed the temptations of patriotism to swerve them from the interests of truth. Their report is earnestly recommended to the attention of the Tribunal as containing a statement of all the material facts relating to seal life, uncolored by national interest, and clearly presenting the scientific conclusions which those facts compel.

From the evidence classified as above, which may be regarded as being before the Tribunal, we now proceed to collect the principal facts relating to seal life, and the methods by which the animal is pursued and captured, so far as those facts are material in the inquiry whether the United States have the property interest asserted by them. For the principal facts of seal life we borrow the statement contained in the report of the United States Commissioners.

### PRINCIPAL FACTS IN THE LIFE HISTORY OF THE FUR-SEAL.

1. The Northern fur-seal (*Callorhinus ursinus*) is an inhabitant of Bering Sea and the Sea of Okhotsk, where it breeds on rocky islands. Only four breeding colonies are known, namely, (1) on the Pribilof Islands, belonging to the United States; (2) on the Commander Islands, belonging to Russia; (3) on Robben Reef, belonging to Russia; and (4) on the Kurile Islands, belonging to Japan. The Pribilof and Commander Islands are in Bering Sea; Robben Reef is in the Sea of Okhotsk, near the island of Saghalien, and the Kurile Islands are between Yezo and Kamchatka. The species is not known to breed in any other part of the world. The fur-seals of Lobos Island and the south seas, and also those of the Galapagos Islands and the islands off lower California, belong to widely-different species, and are placed in different genera from the Northern fur-seal.

2. In winter the fur-seals migrate into the North Pacific Ocean. The herds from the Commander Islands, Robben Reef, and the Kurile Islands move south along the Japan coast, while the herd belonging to

the Pribilof Islands leaves Bering Sea by the eastern passes of the Aleutian chain.

3. The fur-seals of the Pribilof Islands do not mix with those of the Commander and Kurile Islands at any time of the year. In summer the two herds remain entirely distinct, separated by a water interval of several hundred miles; and in their winter migrations those from the Pribilof Islands follow the American coast in a southeasterly direction, while those from the Commander and Kurile Islands follow the Siberian and Japan coasts in a southwesterly direction, the two herds being separated in winter by a water interval of several thousand miles.

This regularity in the movements of the different herds is in obedience to the well-known law that *migratory animals follow definite routes in migration, and return year after year to the same places to breed.* Were it not for this law, there would be no such thing as stability of species, for interbreeding and existence under diverse physiographic conditions would destroy all specific characters.[1]

The pelage of the Pribilof fur-seals differs so markedly from that of the Commander Islands fur-seals that the two are readily distinguished by experts, and have very different values, the former commanding much higher prices than the latter at the regular London sales.

4. The old breeding males of the Pribilof herd are not known to range much south of the Aleutian Islands, but the females and young appear along the American coast as far south as northern California. Returning, the herds of females move northward along the coasts of Oregon, Washington and British Columbia in January, February, and March, occurring at varying distances from shore. Following the Alaska coast northward and westward, they leave the North Pacific Ocean in June, traverse the eastern passes in the Aleutian chain, and proceed at once to the Pribilof Islands.

5. The old (breeding) males reach the islands much earlier, the first coming the last week in April or early in May. They at once land and take stands on the rookeries, where they await the arrival of the females. Each male (called a bull) selects a large rock, on or near which he remains until August, unless driven off by stronger bulls, never leaving for a single instant, night or day, and taking neither food nor water. Both before and for sometime after the arrival of the females (called cows) the bulls fight savagely among themselves for positions on the rookeries and for possession of the cows, and many are severely wounded. All the bulls are located by June 20.

6. The bachelor seals (holluschickie) begin to arrive early in May, and large numbers are on the hauling grounds by the end of May or first week of June. They begin to leave the islands in November, but many remain into December or January, and sometimes into February.

7. The cows begin arriving early in June, and soon appear in large schools or droves, immense numbers taking their places on the rookeries each day between the middle and end of the month, the precise dates varying with the weather. They assemble about the old bulls in compact groups, called harems. The harems are complete early in July,

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[1] The home of a species is the area over which it breeds. It is well known to naturalists that migratory animals, whether mammals, birds, fishes, or members of other groups, leave their homes for a part of the year because the climatic conditions or the food supply become unsuited to their needs; and that wherever the home of a species is so situated as to provide a suitable climate and food supply throughout the year, such species do not migrate. This is the explanation of the fact that the northern fur-seals are migrants, while the fur-seals of tropical and warm temperate latitudes do not migrate.

at which time the breeding rookeries attain their maximum size and compactness.

8. The cows give birth to their young soon after taking their places on the harems, in the latter part of June and in July, but a few are delayed until August. The period of gestation is between eleven and twelve months.

9. A single young is born in each instance. The young at birth are about equally divided as to sex.

10. The act of nursing is performed on land, never in the water. It is necessary, therefore, for the cows to remain at the islands until the young are weaned, which is not until they are four or five months old. Each mother knows her own pup, and will not permit any other to nurse. This is the reason so many thousand pups starve to death on the rookeries when their mothers are killed at sea. We have repeatedly seen nursing cows come out of the water and search for their young, often travelling considerable distances and visiting group after group of pups before finding their own. On reaching an assemblage of pups, some of which are awake and others asleep, she rapidly moves about among them, sniffing at each, and then gallops off to the next. Those that are awake advance toward her, with the evident purpose of nursing, but she repels them with a snarl and passes on. When she finds her own, she fondles it a moment, turns partly over on her side so as to present her nipples, and it promptly begins to suck. In one instance we saw a mother carry her pup back a distance of 15 meters (50 feet) before allowing it to nurse. It is said that the cows sometimes recognize their young by their cry, a sort of bleat.

11. Soon after birth the pups move away from the harems and huddle together in small groups, called "pods," along the borders of the breeding rookeries and at some distance from the water. The small groups gradually unite to form larger groups, which move slowly down to the water's edge. When six or eight weeks old the pups begin to learn to swim. Not only are the young not born at sea, but if soon after birth they are washed into the sea they are drowned.

12. The fur-seal is polygamous, and the male is at least five times as large as the female. As a rule each male serves about fifteen or twenty females, but in some cases as many as fifty or more.

13. The act of copulation takes place on land, and lasts from five to ten minutes. Most of the cows are served by the middle of July, or soon after the birth of their pups. They then take the water, and come and go for food while nursing.

14. Many young bulls succeed in securing a few cows behind or away from the breeding harems, particularly late in the season (after the middle of July, at which time the regular harems begin to break up). It is almost certain that many, if not most, of the young cows are served for the first time by these young bulls, either on the hauling grounds or along the water front.

These bulls may be distinguished at a glance from those on the regular harems by the circumstance that they are fat and in excellent condition, while those that have fasted for three months on the breeding rookeries are much emaciated and exhausted. The young bulls, even when they have succeeded in capturing a number of cows, can be driven from their stands with little difficulty, while (as is well known) the old bulls on the harems will die in their tracks rather than leave.

15. The cows are believed to take the bull first when two years old, and deliver their first pup when three years old.

16. Bulls first take stands on the breeding rookeries when six or seven

years old. Before this they are not powerful enough to fight the older bulls for positions on the harems.

17. Cows, when nursing, regularly travel long distances to feed. They are frequently found 100 or 150 miles from the islands, and sometimes at greater distances.

18. The food of the fur-seal consists of fish, squids, crustaceans, and probably other forms of marine life also. (See Appendix E.)

19. The great majority of cows, pups, and such of the breeding bulls as have not already gone, leave the islands about the middle of November, the date varying considerably with the season.

20. Part of the nonbreeding male seals (holluschickie), together with a few old bulls, remain until January, and in rare instances until February, or even later.

21. The fur-seal as a species is present at the Pribilof Islands eight or nine months of the year, or from two-thirds to three-fourths of the time, and in mild winters sometimes during the entire year. The breeding bulls arrive earliest and remain continuously on the islands about four months; the breeding cows remain about six months, and part of the nonbreeding male seals about eight or nine months, and sometimes throughout the entire year.

22. During the northward migration, as has been stated, the last of the body or herd of fur-seals leave the North Pacific and enter Bering Sea in the latter part of June. A few scattered individuals, however, are seen during the summer at various points along the Northwest Coast; these are probably seals that were so badly wounded by pelagic sealers that they could not travel with the rest of the herd to the Pribilof Islands. It has been alleged that young fur-seals have been found in early summer on several occasions along the coasts of British Columbia and southeastern Alaska. While no authentic case of the kind has come to our notice, it would be expected from the large number of cows that are wounded each winter and spring along these coasts and are thereby rendered unable to reach the breeding rookeries and must perforce give birth to their young—perhaps prematurely—wherever they may be at the time.

23. The reason the northern fur-seal inhabits the Pribilof Islands to the exclusion of all other islands and coasts is that it here finds the climatic and physical conditions necessary to its life wants. This species requires a uniformly low temperature and overcast sky and a foggy atmosphere to prevent the sun's rays from injuring it during the long summer season when it remains upon the rookeries. It requires also rocky beaches on which to bring forth its young. No islands to the northward or southward of the Pribilof Islands, with the possible exception of limited areas on the Aleutian chain, are known to possess the requisite combination of climate and physical conditions.

All statements to the effect that fur-seals of this species formerly bred on the coasts and islands of California and Mexico are erroneous, the seals remaining there belonging to widely different species.

In the general discussion of the question submitted to the Commission it will be convenient to consider the subject under three heads, namely:

*Conditions* of seal life in the region under consideration at the present time.

*Causes*, the operation of which lead to existing conditions.

*Remedies*, which if applied would result in the restoration of seal life to its normal state, and to its continued preservation in that state.

We make no apology for adopting these statements of the United States Commissioners in their own language. The facts could hardly be more precisely expressed, and it is believed that every part of the statement will be accepted by the Tribunal as true. There is, indeed, but little to be found even in the report of the Commissioners of Great Britain in the way of direct contradiction. In order, however, that the Arbitrators may be facilitated in the verification of any facts as to which they may be in doubt, a brief discussion of the facts as to which any question has been made in the Report of the British Commissioners will be found in Part Sixth of this Argument (pp. 228–313).

There are certain material propositions of fact which are not wholly embraced in the above quoted extract from the Report of the Commissioners of the United States, although they are substantially contained therein, which deserve formal and separate statement.

First. In addition to the climatic and physical conditions above enumerated as necessary to render any place suitable for a breeding ground for the seals, exemption from hostile attack or molestation by man, or other terrestrial enemies, should be included. The defenceless condition of these animals upon the land renders this security indispensable. If no terrestrial spot could be found possessing the favorable climatic and physical requirements above mentioned, and which was not at the same time exempt from the unregulated and indiscriminate hostility of man, the race would speedily pass away.

Second. The mere presence of man upon the breeding places does not repel the seals, nor operate unfavorably upon the work of reproduction. On the contrary, presence and the protection which he alone is capable of affording, by keeping off marauders, are absolutely necessary to the preservation of the species in any considerable numbers.

Third. If man invites the seals to come upon their chosen resorts, abstains from slaughtering them as they arrive, and cherishes the breeding animals during their sojourn, they will as confidingly submit themselves to his power as domestic animals are wont to do. It then becomes entirely practicable to select and separate from the herd for slaughter such a number of nonbreeding animals as may be safely taken without encroaching upon the permanent stock.

Fourth. If the herd were exempt from any depredation by man, its numbers would reach a point of equilibrium at which the deficiency of food, or other permanent conditions, would prevent a further increase. At this point, the animal being of a *polygamous* nature, an annual draft from nonbreeding males might be made by man of 100,000—perhaps a larger number—without causing any appreciable permanent diminution of the herd.

Fifth. Omitting from view, as being inconsiderable, such killing of seals as is carried on by Indians in small boats from the shore, there are two forms of capture at present pursued: That carried on under the authority of the United States upon the Pribilof Islands, and that carried on at sea by vessels with boats and other appliances.

Sixth. The killing at the Pribilof Islands if confined, as is entirely practicable, to a properly restricted number of non-breeding males, and if pelagic sealing is prohibited, does not involve any danger of the extermination of the herd, or of appreciable diminution in its normal numbers. It is far less expensive than any other mode of slaughter, and furnishes the skins to the markets of the world in the best condition. The killing at these islands, since the occupation by the United States, has been restricted in the manner above indicated. It has been the constant endeavor of the United States to carefully cherish the seals and to make no draft except from the normal and regular increase of the herd. If there has at any time been any failure in carrying out such intention, it has been from some failure to carry out instructions, or want of knowledge respecting the condition of the herd. The United States are under the unopposed influence of the strongest motive, that of self-interest, to so deal with the herd as to maintain its numbers at the highest possible point. The annual draft made at the islands since the occupation of the United States has been until a recent period about 100,000. This draft would be in no way excessive were it the only one made upon the herd by man.

Seventh. Pelagic sealing has three inseparable incidents:

(1) The killing can not be confined to males; and such are the greater facilities for taking females that they comprise three-fourths of the whole catch

(2) Many seals are killed, or fatally wounded, which are not recovered. At least one-fourth as many as are recovered are thus lost.

(3) A large proportion of the females killed are either heavy with young, or have nursing pups on the shore. The evidence upon these points is fully discussed in Appendix.

Eighth. Pelagic sealing is, therefore, by its nature, destructive of the *stock*. It can not be carried on at all without encroaching *pro tanto* upon the normal numbers of the herd, and, if prosecuted to any considerable extent, will lead to such an extermination as will render the seal no longer a source of utility to man.

Returning to the main proposition hereinbefore established, that some legal and determinate owner must be assigned to all tangible things which are (1) objects of desire, and (2) limited in supply, and (3) capable of ownership, the question is, do the Alaskan fur-seals exhibit these three essential conditions of property? Respecting the first two, no discussion is needed. That this animal is in the highest degree useful to man, and an object of eager human desire, is not questioned, and this earnest controversy is abundant proof of it. That the supply is limited and in danger of being cut off by the depredations of man is agreed to by the parties.[1] Whatever difference there may be, must and does arise upon the question whether the animal is *susceptible of ownership*. Doubt and difference are indeed possible here, and the first step in the effort to remove them should be to have a clear understanding of the meaning of the term, *susceptibility of ownership*. The definition which would naturally be first given is susceptibility of appropriation by the owner to his own use to the exclusion of all others. But this does not render the whole language entirely intelligible. We still need to know how it is possible for man *to make* this sort of exclusive appropriation to himself. What are the *acts* which are sufficient to constitute it? Must the thing, in order to be thus appropriated, be actually *in manu*, or otherwise physically attached to the person of the owner, or even within his immediate reach and sight, so that he can immediately assert his appropriation and forbid all intrusion upon it?

It is here that the conception of *ownership*, as distinct from mere *possession*, comes into view, and, inasmuch as it has a close bearing upon the subject of our discussion, it should receive corresponding attention. In the rude ages of society there was but little occasion to assert a right of property beyond the few necessary things which life required, and these were mostly held in immediate possession, which could be defended by individual power. Clothing was upon the person, and the weapons for the chase, and the few agricultural implements were within immediate reach. The stock of cattle and any surplus stores of food were the property of the community or tribe. But, upon the change to private property, individuals, in pursuance of natural desires, would seek to provide themselves with increased abundance of cattle and agricultural products as stores for the future. In this and manifold other ways there arose a need for protection to these accumulations when beyond the immediate possession of the producer. If they were taken by another, the attempt would be made to regain them by force; and the disposition to produce and save would be discouraged by the difficulty and danger. The same necessities out of which property arose, namely the peace and order of society and its advancement, forced a development in the conception, and gave birth to the idea of *ownership* as distinct from and independent of actual *possession*. Society came to the aid of individual power, and undertook to guaranty to the individual the peaceful enjoyment of what he had produced by stamping upon it his personality.

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[1] Joint Report, Case of the United States, p. 309.

We thus perceive that the idea of *ownership* as distinct from *possession* is not an original conception. It is the product of an evolution in thought, which has accompanied the progress of man. An able English writer, in the course of an interesting sketch of the successive stages of this development observes:

> The fact or institution of ownership is such an indispensable condition to any material or social progress that, even throughout the period during which the attention of law is concentrated upon family and village ownership, the ownership on the part of individual persons, of those things which are needed for the sustenance of physical life, becomes increasingly recognized as a possibility or necessity. One of the most important steps out of savagery into civilization is marked by the fact that the security of tenure depends upon some further condition than the mere circumstance of possession.
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> The use of the products of the earth, and still more, the manufacture of them into novel substances, consists, generally, of continuous processes extending over a length of time during which the watchful attention of the worker can only be intermittently fixed upon all the several points and stages. The methods of agriculture and grazing, as well as the simplest applications of the principle of division of labor, similarly presuppose the repeated absence of the farmer or mechanic from one part of his work, while he is bestowing undistracted toil upon

another part; or else entire absorption in one class of work, coupled with a steady reliance that another class of work, of equal importance to himself, is the object of corresponding exertion on the part of others.

In all these cases the mere fact of physical holding or *possession*, in the narrowest sense, is no test whatever of the interests or claims of persons in the things by which they are surrounded.[1]

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[1] The Science of the Law, by Sheldon Amos, Lond., 1881, pp. 148, *et seq.* A distinguished French jurist thus traces the development of the conception of *ownership* as distinct from possession:

"SEC. 64. If the laws attached to property and those which are derived from it are now very extensive it was not thus originally. Property was confounded with possession and it was lost with it.

"Before the foundation of the civil state the earth was no one's; the fruits belonged to the first occupant. The men that were distributed over the globe lived in a state which the writers who have written on natural law have termed negative community, in distinction from positive community, in which several associates held in common ownership an indivisible thing belonging to each in a certain portion.

"Negative community, on the contrary, consisted in that the thing common to all did not belong more to each one of them in particular than to the other, and in that no one could prevent another from taking that which he considered proper to make use of in his needs.

"This doctrinal expression of negative community signifies nothing else but the primitive and determinate right (*droit*) that all men had originally to make use of the goods which their earth offered, as long as no one had yet taken possession of them.

"SEC. 65. It is this which is termed the right of the first occupant. He who first possesses himself of a thing acquires over it a kind of transient ownership, or, to speak more exactly, a right of preference which others should respect. They should leave that thing to him while he possesses it; but after he had ceased to make use of it or to occupy it, another in his turn might make use of it or occupy it.

"If the older possessor had invoked his past possession as a right of preference still existing, the younger could be able to answer by his present possession; and when, furthermore, rights are equal on both sides, it is just and natural that the actual possessor should be preferred; for to take possession away from him there should be a stronger right than his own.

"Thus the right of occupation is a title of legitimate preference founded on nature.

"SEC. 66. The existence of this primitive state of negative community is incontestible; proofs of the same are found in Genesis, the most ancient of all books, and the most venerable even when considering it only from an historical point of view.* The poets, in their picturing of the Golden Age, have left us ornamented works, but inaccurate ones. The ancient historians have transmitted to us tradition; and, finally, examples thereof were found again in the habits of the savage tribes of America when that continent was discovered.

"SEC. 67. Thus following a comparison of Cicero, the world was like a vast theater belonging to the public, and of which each seat became the property of the first occupant as long as it suited him to remain therein, but which he could not prevent another from occupying after he had left it.

"SEC. 68. But how could this preference acquired by occupation have become a stable and permanent ownership, that would continue to subsist and could be reclaimed after the first occupant had ceased to be in possession?

"It was agriculture that gave birth to the idea of and made felt its necessity for permanent property. In measure as the number of men increased, it became more

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*Genesis i, 28 and 29.

The range of thought by which the rights of ownership are limited to a clear physical possession is characteristic of the barbaric age. The first advances beyond it are promoted and accompanied by the beginnings of the conception of *ownership* as distinct from *possession*, and the full development of that conception is the condition and accompaniment of the advanced stages of civilization. Its final expression is in the main proposition which stands at the basis of our argument, and was laid down at the beginning, namely, that every useful thing the supply of which is limited should be the property of a determinate owner, provided it is susceptible of exclusive appropriation. With those things which are capable of actual possession at all times there is no difficulty. The right of property once established by possession continues, but in the case of those things not thus capable the law

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difficult to find new uninhabited lands; and on the other hand continued habitation of the same place engendered a too rapid consumption of the natural fruits of the earth for them to suffice for the subsistence of all the inhabitants and of their flocks, without changing locality, or without providing therefor by cultivation in a constant and regular manner.

"Thus agriculture was the natural result of the increase of the human species; agriculture in turn favored population, and rendered necessary the establishment of permanent property. For who would give himself the trouble to labor and to sow, if he had not the certainty of reaping?

"The field that I have cleared and sown should belong to me at least until I have gathered the fruits that my labor has produced. I have the right to employ force to repulse the unjust person who would wish to dispossess me of it and to drive away him who should have seized it during my absence. I am regarded as continuing to occupy the field from the first tilth to the harvest, though, in the interval, I do not perform each moment exterior acts of occupation or of possession, because one cannot suppose that I have cleared, cultivated, and sown without intention to reap.

"SEC. 69. This habitual occupation, which results from cultivation, preserves therefore the right of preference which I had acquired by first occupation. It is this habitual occupation which civil law (*le droit civil*) extended and applied as a means of preserving possession, in establishing as a maxim that possession is preserved by sole intention, *nudo animo*.

"Cultivation forms a stronger and more lasting tie than single occupation; it gives a perfect right to the harvest. But how maintain a right (*droit*) other than by doubtful contest before the foundation of the civil state?

"SEC. 70. Moreover the right which cultivation gives and the effects of occupation which are derived therefrom cease with the harvest if there are no new acts of cultivation; for nothing would further indicate an intention to occupy. The field which would cease to be cultivated would again become vacant and subject to the right of the first occupant.

"Agriculture alone, therefore, was not sufficient to establish permanent property; and since as before the invention and the usage of agriculture, property was acquired by occupation, was preserved by continued or habitual possession, and was lost with possession. This principle is still followed in regard to things which have remained in the primitive state or negative community, such as savage animals.

"SEC. 71. In order to give to property a nature of stability which we observed in does not lend its aid to reinforce the imperfect possession unless the great purposes of human society require it.

That it will lend its aid to the utmost extent when necessary in order to attain its own great purposes is made manifest by the tendency of the advancing civilization of the present age to award a right of property in the products of the mind, which are wholly intangible and not the subject of possession in any form, and to extend the right, not only by municipal law throughout the territories of particular states, but beyond their boundaries by the means of an international recognition. This right, fully defended by natural law, and long established in respect of useful inventions in the arts, has been for years pressing for recognition in respect to all the products of the mind and throughout the world. Its inherent moral force has secured a certain measure of obedience without the aid which is furnished by judicial tribunals, and

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it to-day, positive laws and magistrates to execute them were necessary; in other words, the civil state was required.

"The increase of the human species had rendered agriculture necessary; the need to assure to the cultivator the fruits of his labor made felt the necessity of permanent property and of laws to protect them. Thus, it is to property that we owe the foundation of the civil state. Without the tie of property it would never have been possible to subject man to the salutary yoke of the law; and without permanent property the earth would have continued to remain a vast forest.

"Let us say, therefore, with the most exact writers, that if transient ownership or the right of preference with occupation gives, is anterior to the foundation of civil society permanent ownership, as we know it to-day, is the work of civil law.

"It is civil law which has established as a maxim that once acquired property is never lost without the act of the owner, and that it is preserved even after the owner has lost possession or detention of the thing, and when it is in the hands of a third party.

"Thus property and possession, which in the primitive state were confounded, became by the civil law two distinct and independent things; two things which, according to the language of the laws, have nothing in common between them. Property is a right a legal attribute; possession is a fact.

"It is seen by this what prodigious changes have been wrought in property, and how much civil laws have changed its nature.

"SEC. 72. This change was effected by means of real action that the laws granted against the possessor whoever he might be, to compel him to surrender the thing to the owner who had lost possession thereof. This action was granted to the owner not alone against the possessor in bad faith, but also against the possessor in good faith, to whom the thing had come without fraud or without violence, without his being cognizant of the owner's rights, and even though he had acquired it from a third party by virtue of a legal title.

"SEC. 73. Property was, therefore, considered a moral quality inherent in the thing, as a real tie which binds it to the owner, and which can not be severed without an act of his.

"This right of reclaiming a thing in whatever hands it is found is that which forms the principal and distinctive characteristic of property in the civil state." (Toullier French Civil Law, Paris, 1842, 5th ed., vol. 3, tit. 2, ch. 1.)

its complete establishment by the instrumentality of formal international copyright laws is impatiently awaited.

These considerations lead up to the particular problem upon which we are engaged, namely, what is *capability of ownership*, that is to say, under what circumstances, and to what extent, will and does society step in and *aid the infirmity of individual power* by stamping the character of *ownership* upon things which are out of the actual possession and away from the presence of the owner? The general answer is obvious; it will do this whenever social necessities require, and to the extent to which they require it. And this answer is best justified by pointing out what society, through the instrumentality of the law, universally does. We may first look to the instance of *land.*

In respect to the earth itself, society will recognize no title which is not directly, or indirectly, acquired from itself. No man is permitted to assert in respect to uninhabited countries, or countries inhabited only by savages, a private title. But nations may assert a title thereto, although there is a limit to such assertion. No nation can assert an ownership over such lands to an extent greater than it can reasonably occupy and improve. The limit is found in that principle of the law of nature which declares that the earth was made for mankind, and in order to enable the human race to carry out its destiny, and that to this end civilized nations may supplant barbarous ones; but that every nation in thus appropriating to itself the waste places of the earth, must not take from others what it can not itself improve and apply to the great destiny for which in the order of nature it has been given.

In respect to individual ownership of lands, the state will recognize and maintain private titles to such lands as it chooses to give. Sometimes, as we have already shown, in early and rude social conditions, it prefers to give nothing, but to retain the ownership in itself. In general, however, civilized societies permit and encourage the acquisition of lands by individuals and place no limits upon the extent of acquisition. Society acts upon the assumption, for the most part undoubtedly correct, that under individual ownership its territories will be best improved and turned to the purposes intended by nature. That the underlying motive upon which society acts is the intention that the soil should be devoted to those purposes to which the law of nature dictates that it should be applied, is well manifested by the circumstance that, where the action of the private proprietors tends to counteract this policy, the state is often moved to revoke its gifts, and make a new disposition of its lands in harmony with natural law. This tendency is observable where great proprietors reserve large tracts of land for game preserves, for the purposes of mere pleasure, or hold them under a system of rental unfavorable to agricultural improvement, and not adapted to supply the wants of an increasing population. The recent legislation of Great Britain in respect to Ireland is a notable instance of an assertion by the State of that supreme dominion over its lands which a nation always retains, to the end that they may be made the more subservient to the purposes for which the earth was destined.

From what has just been said it is apparent that land, although no individual can actually appropriate more than a very small area to his exclusive use, is nevertheless regarded in the law as *susceptible of exclusive appropriation.* The state permits its citizens to assert title to it to an unlimited extent, and the assertion may be made without even any formal physical act of possession. No fences or enclosures even are necessary. The execution of an instrument in writing is of itself sufficient. The law steps in to aid individual power and enables a private person to hold title to a province as securely as he holds the harvests he reaps from his fields with his own hands.

And the reason is immediately obvious. It is only by the award of property that the earth will be *cultivated.* No man will sow that another may reap; but if the law will lend its aid to human power by protecting the owner of land in his exclusive enjoyment of it, he can and will draw from it by his art and industry its annual product without impairing its capacity for production, and will even increase that capacity. This is the only way in which an increased population can be supported. Social necessity, therefore, requires that land should be deemed susceptible of exclusive appropriation, and all structures affixed to the land become a part of it and are property together with it.

In respect to such *movable things* as are the fruits of the land or the products of industry, there is no limit to the assertion of ownership, and the circumstance of actual possession is absolutely immaterial. The fruits of the cultivation of the earth must, of course, be the property of the husbandman, else his title to the soil would be unavailing, and, in respect to all other products of industry, the same social necessity protects them as property. But for such protection they would not be produced, except for the personal use of the workman. The various arts may be said to be subsidiary to the better cultivation of the earth, for it is these which enable the cultivators to devote their exclusive attention to it.

All the *useful domestic animals* are held to be the subjects of exclusive appropriation, however widely they may wander from their masters. A man may assert his title to vast herds, which roam over boundless wastes, and which he may not even see for months in succession, as easily as to the cattle which are nightly driven to his home. He has no proper *possession* of them other than that which the law supplies by the title which it stamps upon them. And the obvious reason is that from their *nature and habits* he has such a *control* over them as enables him, if the law will lend him its aid, to *breed* them, in other words, to cultivate them, and furnish the annual increase for the supply of human wants, and at the same time to preserve the stock. In no other way could this be accomplished. Without the protection afforded by the safeguard of property the race of domestic animals would not have existed.

In the case of animals in *every respect wild* and yet *useful*, such as sea fishes, wild ducks, and most other species of game, we find different conditions. Here man has no control over the animals. They do not, in consequence of their nature and habits, regularly subject themselves to his power. He cannot determine, in any case, what the annual increase is. He cannot *separate* the superfluous increase from the breeding stock, and confine his drafts to the former, leaving the latter untouched. For the most part these animals are not *polygamous*, but *mate* with each other, and no part of their numbers are *superfluous* rather than another. All drafts made upon them are equally destructive; for all must be taken from breeding animals. No selections for slaughter can be made. In short, man can not, by the practice of art and industry, *breed* them. They can not be made the subjects of *husbandry*. And yet man must be permitted to take them for use, or be wholly deprived of any benefit from them. No award of a property interest in them to any man or set of men would have any effect in enabling the annual increase to be applied to satisfy human wants and at the same time to preserve the stock. The law could not give to individual men that control over them which their nature and habits deny; and the law never makes the attempt. The fish of the sea and most of the fowls of the air are, and must forever remain, in every sense wild. They are not, therefore, the subjects of property.

And here nature, as if conscious of the inability of man to furnish that protection to these wild races against destructive pursuit which the institution of property affords in the case of domestic animals, herself makes provision for the purpose. In limiting within narrow bounds his *control* over them, she correspondingly limits his power of destruction. She confers upon these races the means of eluding capture. And, besides this, in the case of wild animals most largely useful, she makes destruction practically impossible by furnishing a prodigious supply. The great families of useful fishes are practically inexhaustible. This is, however, much less so in some cases than in others. In respect of many species of fishes, game birds, and other animals, the human pursuit is so eager as to endanger the existence of the species; and in such instances, society, unable by the award of a property interest to arrest the destruction, resorts to the most effective devices which are in its power to secure that end. It confines and limits the destruction to certain seasons and places by positive enactments of which game laws are the type.

We now come to those animals which lie near the vague and indefinite boundary which separates the *wild* from the *tame,* to animals which exhibit some of the qualities of each class; and we shall instance those already made the subject of discussion when confining our inquiry to the settled doctrines of the municipal law. These instances were those of *bees, deer, pigeons, wild geese, and swans.* All these, it will be remembered, are regarded in that law as subjects of property so long as they possess the *animum revertendi,* evidenced by their usual habit of returning to a particular place. These animals differ widely from each other in their nature; but they have certain characteristics which are common to all. Each of them, habitually and voluntarily, so far subjects itself to the control of man as to enable him, by the practice of art and industry, to take the annual increase for the supply of human wants without diminishing the stock; in other words, to *breed them,* and to make them the subject of *husbandry;* and, in the case of each, unless a property interest were awarded by the law, that is to say, unless the law came to the aid of human infirmity, and declared them to be *susceptible of ownership,* notwithstanding the want of actual possession, they would cease to exist and be lost to the world.

The case of *bees* is an instructive illustration. They are by nature wild. They can not be tamed so as to be made obedient to man. They move freely through the air and gather their honey from flowers in all places. But they have an instinct which moves them to adopt a suitable place for a home, and man may avail himself of this to induce them to take up their abode upon his property, where he can protect them from other enemies and take from them a part of their accumulated stores. He is thus also enabled to capture the new swarms which are produced, by following them as they take their flight. In this way the art and industry of man may increase the stock of bees and the useful food which they supply. The municipal laws of all nations therefore declare that bees thus dealt with are property. Anyone who destroys them, even when away from the land of the owner, commits a wrong for which the laws will afford full redress; and the right of property remains even in respect to a swarm which takes its flight beyond the boundaries of the owner, so long as he can identify and pursue it. It would be manifestly impossible to protect that right any further. There is no change effected in the nature of the bees by this action of man. They are as wild as their fellows which have their homes in the forest. Man simply avails himself of their natural instinct to accept a suitable place for their home and storehouse.

A similar instinct is possessed by *pigeons* which leads them and their offspring to take up their abodes in places prepared for them by man. They may be first wonted to it by confinement, or attracted by feeding; but when they have adopted it, if protected against enemies and cherished with care, their number may be greatly multiplied, and by judicious drafts upon the increase a delicate food may be procured in considerable quantities. There is in the case of these animals a difficulty in securing to individual owners all the remedial rights which protect property arising out of the tendency of flocks to commingle, and the impossibility of identification. But, in spite of this, in the opinion of many jurists, they are to be deemed property. The obvious ground is the social benefit which may be secured by offering to this art and industry its natural reward, and thus encourage the practice of it. Without such encouragement society would lose the benefit it receives from this animal.

There is a like opportunity to take advantage of the instincts of wild animals, and thus gain over them a power which makes them subservient to the wants of man in the case of *wild geese and swans*. These also may be made wonted to a particular place, from which they will widely wander over waters belonging to different owners, or to the state, but to which they will habitually return, and where they will rear their young. They thus submit themselves voluntarily to the power of man, and afford him a control over them which enables him at once to preserve the stock and take the increase. On these grounds a right of property in them is conceded to the owner of the spot which they make their home, which is not lost by the temporary departures therefrom. Any killing or capture of these animals by another, having notice of their habits, is a violation of property rights for which the law furnishes redress.

So also in the case of deer ordinarily kept in an inclosure, and fed, and from which selections are made for slaughter. The habit of returning is here only imperfectly established. The animals are apt to resume their wild nature; but nevertheless, the economic uses they subserve are sufficient to sustain a property interest in them, inasmuch as they are thus made, to borrow the language employed in relation to them by the English Court of Common Pleas, "as much a sort of husbandry as horses, cows, sheep, or any other cattle."[1]

It is observable that these doctrines relating to property so familiar in the municipal jurisprudence of civilized nations, relating to the several descriptions of animals above mentioned, have not had their origin in special legislation, but in the unwritten law. They are the fruit of the unconscious action of society manifesting itself in the formation of usages which eventually compel the recognition of law. This means that they have their origin in natural law which is the basis of all unwritten jurisprudence. They are the dictates of universal morality, cultivated, ascertained, and formulated by judicial action through long periods of time. It is this which stamps them with that character of approved, long established and unchangeable truth which makes them binding upon an international forum as being the indubitable voice of natural and universal law.

The inquiry which has thus been prosecuted into the grounds and reasons upon which the institution of property stands fully substantiates, it is believed, the main proposition with which it began, namely, *that where any useful animals so far subject themselves to the control of particular men as to enable them exclusively to cultivate such animals and obtain the annual increase for the supply of human wants, and at the same time to preserve the stock, they have a property interest in them.* And this conclusion, deducible from the broad and general doctrines of the law of nature, is confirmed by the actual fact as exhibited in the usages and laws of all civilized states. Wherever a useful animal exhibits in its nature and habits this quality, it must be denominated and treated as the subject of property, and as well between nations as between individual men. This is the real ground upon which the municipal law declares the several descriptions of wild animals, above particularly adverted to, to be property. This is what is intended by making the question of property depend upon the existence of the *animus revertendi.*

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[1] Davies *v.* Powell, Willes, 46.

In the added light thrown by this inquiry into the foundations of the institution of property the case of the fur-seal can be no longer open to doubt, if it ever was. It is a typical instance. Polygamous in its nature, compelled to breed upon the land, and confined to that element for half the year, gentle and confiding in disposition, nearly defenceless against attack, it seems almost to implore the protection of man, and to offer to him as a reward that superfluity of increase which is not needed for the continuance of the race. Its own habits go very far to effect a separation of this superfluity, leaving little to be done by man to make it complete. The selections for slaughter are easily made without disturbance or injury to the herd. The return of the herd to the same spot to submit to renewed drafts is assured by the most imperious instincts and necessities of the animal's nature. During the entire period of all absences the *animus revertendi* is ever present. The conditions are, as observed by the eminent naturalist, Prof. Huxley, *ideal.*[1] All that is needed to make the full extent of the blessing to mankind available is the exercise on the one hand of care, self-denial, and industry on the part of man at the breeding places, and, on the other, exemption from the destructive pursuit at sea. The first requisite is supplied. A rich reward is offered for, and will certainly assure, the exercise of art and industry upon the land. All that is demanded from the law is that exemption from destructive pursuit on the sea which the award of a property interest will insure.

Nor should we omit to call attention to an aspect of the question, presented by the extent of the possession and control of, and over, this race of animals bestowed upon the United States in virtue of their ownership of the lands to which it resorts. This ownership carries with it the *power to destroy* the race almost at a single stroke. It carries with it also, if interference by other nations is withheld, the power to forever preserve. The power to destroy is shared by other nations. The power to use, and at the same time to preserve, belongs to the United States alone. This power carries with it the highest obligation to use it for the purpose for which it was bestowed. It is in the highest and truest sense a trust for the benefit of mankind. The United States acknowledge the trust and have hitherto discharged it. Can anything be clearer as a moral, and under natural laws, a legal obligation than the duty of other nations to refrain from any action which will prevent or impede the performance of that trust? The only office which belongs to other nations is to see that this trust is duly performed. In this the whole world has a direct interest. However much interference by one nation in the affairs and conduct of another may be deprecated, it is not to be denied that exigencies may arise, as they have arisen, in which such interference may be defended.[1]

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[1] Case of the United States, Appendix, Vol. I, p. 412.

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[1] We have habitually referred to *art, industry*, and *self-denial* on the part of man successfully practiced for the purpose of *increasing* the annual product of the earth as being the main foundation upon which society awards a property interest. The exercise of these qualities is enjoined by natural law, and nature always assigns to an observance of her dictates its appropriate reward. That *art* and *industry* should be thus rewarded is obvious, but the merit of *self-denial* or *abstinence*, is not so immediately plain. It will be found, however, upon reflection, to possess the same measure of desert.

In the case of the seals, for instance, the immediate temptation is to turn the whole mass to present account. Had this been done, the herds would long since have been practically exterminated. Their *present* existence is the result of a policy of denial of present enjoyment in the hope of a larger and more permanent advantage. It is quite unnecessary to enlarge upon the prodigious importance to mankind of such a policy. Indeed, without it the race could not have emerged from barbarism. The fur-seals thus preserved are as truly the fruit of human industry and effort as any of the products of the artisan.

This merit of *abstinence* is the sole foundation upon which economists and moralists place the right to *capital*, and *interest* for its use. Capital is simply the fruit of *abstinence*. The following citations are pertinent in this place:

From N. W. Senior, Political Economy, 6th ed., London, 1872, p. 58 *et seq*.

"But although human labour and the agency of nature, independently of that of man, are the primary productive powers, they require the concurrence of a third productive principle to give them complete efficiency. The most laborious population inhabiting the most fertile territory, if they devoted all their labour to the production of immediate results and consumed its produce as it arose, would soon find their utmost exertions insufficient to produce even the mere necessaries of existence.

"To the third principle or instrument of production, without which the two others are inefficient, we shall give the name of *abstinence*, a term by which we express the conduct of a person who either abstains from the unproductive use of what he can command, or designedly prefers the production of remote to that of immediate results."

After defining capital as "an article of wealth, the result of human exertion employed in the production or distribution of wealth," he goes on to say: "It is evident that capital thus defined is not a simple productive instrument. It is in most cases the result of all the three productive instruments combined. Some natural agent must have afforded the material; some delay of enjoyment must in general have reserved it from unproductive use, and some labour must in general have been employed to prepare and preserve it. *By the word abstinence we wish to express that agent, distinct from labour and the agency of nature, the concurrence of which is necessary to the existence of capital and which stands in the same relation to profit as labour does to wages.* We are aware that we employ the word abstinence in a more exten-

It seems impossible to imagine any ground upon which this demand can be resisted, and even difficult to understand how a question could have been made rejecting it. If there were even the semblance of a *moral* reason upon which opposition could be rested, there might be room for hesitation and debate; if anything in the nature of a *right* to

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sive sense than is warranted by common usage. Attention is usually drawn to abstinence only when it is not united with labour. It is recognized instantly in the conduct of a man who allows a tree or a domestic animal to attain its full growth, but it is less obvious when he plants the sapling or sows the seed corn. The observer's attention is occupied by the labour, and he omits to consider the additional sacrifice made when labour is undergone for a distant object. This additional sacrifice we comprehend under the term abstinence. * * * of all the means by which man can be raised in the scale of being, abstinence, as it is perhaps the most effective, is the slowest in increase, and the latest generally diffused. Among nations those that are the least civilized, and among the different classes of the same nation those which are the worst educated, are almost the most improvident and consequently the least abstinent."

(At page 69): "The savage seldom employs, in making his bows or his dart, time which he could devote to the obtaining of any object of immediate enjoyment. He exercises, therefore, labour and providence, but not abstinence. The first step in improvement, the rise from the hunting and fishing to the pastoral state, implies an exercise of abstinence. Much more abstinence, or, in other words, greater use of capital, is required for the transition from the pastoral to the agricultural state; and an amount not only still greater, but constantly increasing, is necessary to the prosperity of manufactures and commerce."

From "Essai sur la Répartition des Richesses," par Paul Leroy-Beaulieu, 2d ed., Paris, 1883:

"The first cause of interest is the service rendered to the borrower, the increase of productivity given to his labor, industry, commerce. The second cause of interest is the pains taken by the lender, the sacrifice necessary for abstinence in depriving himself of immediate consumption for a delayed profit."

From "American Political Economy." Francis Bowen, p. 204, Chap. 11:

"Capital being amassed as we have seen by frugality or abstinence, profits are the reward of abstinence just as wages are the remuneration of labor, and rent is the compensation for the use of land."

From "Some leading Principles of Political Economy Newly Expounded." By J. E. Cairnes, New York, 1874, p. 80:

"The term abstinence is the name given to the sacrifice involved in the advance of capital. As to the nature of the sacrifice it is mainly of a negative kind, consisting chiefly in deprivation and postponement of enjoyment implied in the fact of parting with our wealth, so far at least as concerns our present power of commanding it."

From "Principles of Economics." Alfred Marshall, professor in the University of Cambridge, London, 1870. Vol. I, Book 7, Chap. 7, sec. 2, p. 612:

"A man who, working on his own account, makes a thing for himself has the usance of it as the reward for his labour. The amount of his work may be determined in a great measure by custom or habit, but in so far as his action is deliberate he wil cease his work when the gains of further work do not seem to him worth the trouble of getting them. But the awakening of a new desire will induce him to work on further. He may take out the fruits of this extra work in immediate and passing enjoyment, or capture seals at sea could be pretended, it would be necessary to pause and deliberate. It may indeed be said that there is no *power* in the United States to prevent sealing upon the high seas; but this is a begging of the question. If they have a property interest in the seals, the power to protect it can not be wanting. But let this question go

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in lasting but distant benefits, * * * or in implements which will aid him in his work, * * * or, lastly, in things which he can let out on hire or so invest as to derive an income from them. Man's nature, however, being impatient of delay, he will not, *as a rule*, select any of the three latter methods unless the total benefit which he expects in the long run seems, after allowing for all risks, to show a surplus over its benefits to be derived by taking out the fruits of his labour in immediate enjoyment. That surplus, whether it take the form of interest on capital, or extra pleasure derived from the direct usance of permanent forms of wealth, is the reward of his postponing or waiting for the fruits of his labour."

From the Ethics of Usury and Interest. By W. Blissard, M.A., London, 1892, p. 26 *et seq.* :

"On the hypothesis that all have equal opportunities of social progress, the social destroyers of its wealth deserve condemnation, while those who have served the cause of progress by saving from personal consumption a part of the earth's produce and devoting it to the improvement of national mechanism have a claim to a reward proportioned to their service and to the efforts which they have made in rendering it. These are the conditions of advance in civilization in the arts, and sciences, in literature, and religion. For the command over nature differentiates the civilized man from the savage. * * * It appears, hence, how accurate is the common phrase which calls thrift 'saving.' Economists favor such other words as 'abstinence,' deferred 'enjoyment,' and the like; but to 'save' expresses the primary idea that something has been saved from the destruction to which mere animal instinct would devote it. In such salvage lies the progress of the human species from savagery to godhead. By how much has been thus saved has the salvation, material, mental, and moral, of the race been achieved."

From "Political Economy." By Francis A. Walker. New York, 1883. Page 67, sec. 78:

"*The Law of Capital.*—It is not necessary to trace further the increase of capital. At every step of its progress capital follows one law; it arises solely out of saving; it stands always for self-denial and abstinence."

(Page 232): "Capital is, as we have seen, the result of saving. Interest, then, is the reward of abstinence. A part, a large part, of all produced wealth must be at once consumed to meet the conditions of human existence; but the remaining portion may be consumed or may be accumulated, according to the will of the owner. The strength of the motive to accumulation will vary with the reward of abstinence. If that be high the disposition to save will be strengthened, and capital will be rapidly accumulated; if that be low, that disposition will be relatively weak, and capital will increase slowly, if indeed the body of existing capital be not dissipated at the demands of appetite."

From "Chapters on Practical Political Economy." Prof. Bonamy Price. 2d ed. London, 1882. Pages 127, 128:

Speaking of *Profit*, he says: "What is the nature, the principle of this gain? It is a reward for two things, for the creation and employment of capital. Economists have rightly explained the need and justification for such a reward for the creation of capital, that it is a compensation for abstinence. The owner of the wealth for the present; it will be elsewhere discussed. Let it be conceded, for the sake of argument, that the United States have no power to protect and punish, will it be asserted before this Tribunal, bound to declare and administer the law of nature and nations—a system of *morality*—that this constitutes a *right?* What is it precisely which

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might have devoted it to his own enjoyment; he preferred to save it or turn it into an instrument for creating fresh wealth. It was his own voluntary act, he gave up some luxury, he finds atonement in improved income from increased wealth. His aim was profit, but profit, though it enriched him, was no selfish course; luxurious expenditure would have been the real selfishness. By going in for profit he benefits society. His savings are an advantage to others as well as to himself. * * * Profit is the last thing which should be grudged, for profit is the creator of capital, and capital is the life-blood of civilization and commercial progress."

From "Manual of Political Economy." Henry Fawcett. London, 1877. Bk. II, ch. V, p. 157:

"As capital is the result of saving, the owner of capital exercises forbearance when he saves his wealth instead of spending it. Profits therefore are the reward of abstinence in the same manner that wages are the reward of physical exertion."

From "The Science of Wealth." Amasa Walker. Boston, 1877. Ch. VI, p. 288:

"Interest has its justification in the right of property. If a man can claim the ownership of any kind of wealth, he is the owner of all it fairly produces * * * whoever by labour produces wealth and by self-denial preserves it should be allowed all the benefit that wealth can render in future production."

From "Introduction to Political Economy." A. L. Perry. New York, 1877. P. 115.

"The origin of all capital is in abstinence, and the reward of this abstinence is profit."

From "A System of Political Economy." J. L. Shadwell. London, 1877. P. 159.

"They (capitalists) desire to obtain it (profit) because the saving of capital implies the exercise of abstinence, as the capitalists might have exchanged it for other things for their own immediate consumption; but if they forego their enjoyment in order to produce commodities they require some compensation for the sacrifice to which they submit."

From John Stuart Mill. "Principles of Political Economy." Boston, 1848. Vol. II, p. 484:

"As the wages of the laborer are the remuneration of labor, so the profits of the capitalist are properly the remuneration of abstinence. They are what he gains by forbearing to consume his capital for his own uses and allowing it to be consumed by productive laborers for their uses; for this forbearance he requires a recompense."

And again, at page 553: "Capital * * * being the result of abstinence, the produce of its value must be sufficient to remunerate not only all the labor required but the abstinence of all the persons by whom the remuneration of the different classes of laborers was advanced. The return for abstinence is profit."

From "Manuel d'Économie Politique." Par M. H. Baudrillard. 4th ed. Paris, 1878. P. 382:

"The first element of interest is the privation to which the lender subjects himself, who surrenders his capital for the benefit of another."

(*Id.*, p. 52): "Based upon right, ownership is not less justified by the strongest reasons derived from social utility. It is useful for the laborer who has fertilized would thus be set up as a right? It is simply and without qualification a right to *destroy* one of the gifts of nature to man. It would be saying, not to the United States alone, but to the whole world, "You shall no longer have this blessing which was originally bestowed upon you—this opportunity which nature affords to secure the preservation of the source of a blessing and make it permanently available shall not be improved; and if you ask us for a reason we give you none, except that we so choose, and can, for a few years at least, make a profit to ourselves by carrying on the work of destruction; the sea is free."

Ahrens[1] states: The definitions of the right of property given by positive laws generally concede to the owner the power to dispose of his object in an almost absolute manner, to use and abuse it, and even through caprice to destroy it;[2] but this arbitrary power is not in keeping with natural law, and positive legislation, obedient to the voice of common sense and reason in the interest of society, has been obliged itself to establish numerous restrictions, which, examined from a philosophic view of law, are the result of rational principles to which the right of property and its exercise are subjected.

The principles which govern socially the right of property relate to substance and to form.

I. As to substance, the following rules may be established:

1. *Property exists for a rational purpose and for a rational use;* it is destined to satisfy the various needs of human life; consequently, *all arbitrary abuse, all arbitrary destruction, are contrary to right* (*droit*) and should be prohibited by law (*loi*). But to avoid giving a false extension to this principle, it is important to recall to mind that, according to personal rights, that which is committed within the sphere of

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the soil to retain the soil itself as well as the surface. Otherwise he will use the soil as a possessor who is in haste to enjoy it. Where a thought of the future is wanting there will be no real improvement, no numerous and well-supported population, no civilization with deep roots either moral or material."

* * * "All these advantages can be the outgrowth of nothing but permanent ownership. For the same reason it is well for ownership to be individual and not collective; of this we find proof in the religious communities of the middle ages, and in our own time in the very imperfect condition of property held in common. Collective ownership is attended with this drawback, viz, that it does not sufficiently stimulate the activity of the owner."

[1] Ahrens: Course of Natural Law, Leipzic, 1876, vol. 2, book I, div. 1, sec. 64.

[2] Roman law gave the owner the *jus utendi et abutendi;* after the Austrian code (11, 2, sec. 362), he has the power to destroy arbitrarily that which belongs to him. The Code Napoléon which defines property as "the right to enjoy and to dispose of things in the most absolute manner, provided no use be made of them forbidden by the laws or by the regulations," interposed social interest by this restriction.

private life and of that of the family does not come under the application of public law. It is necessary, therefore, that the abuse be public in order that the law may reach it. It belongs to the legislations regulating the various kinds of agricultural, industrial, and commercial property, as well as to penal legislation, to determine the abuses which it is important to protect; and, in reality legislations as well as police laws, have always specified a certain number of cases of abuses.[1] Besides, all abusive usage is hurtful to society, because it is for the public interest that the object should give the owner the advantages or the services it admits of.[2]

It is assumed throughout the Report of the British Commissioners that pelagic sealing is not necessarily destructive, and that, under *regulation*, the prosecution of it need not involve the extermination of the herds. This assumption and the evidence bearing upon it will be elsewhere particularly treated in what we may have to say upon the subject of regulations. It will there be shown that it is not only destructive in its *tendency*, but that, if permitted, it will complete the work of practical extermination in a very short period of time. But so far as it is asserted that a restricted and regulated pelagic sealing is consistent with the moral laws of nature and should be allowed, the argument has a bearing upon the claim of the United States of a property interest, and should be briefly considered here. Let it be clearly understood, then, just what pelagic sealing is, *however restricted or regulated*. And we shall now describe it by those features of it which are not disputed or disputable.

We pass by the shocking cruelty and inhumanity, with its sickening details of bleating and crying offspring falling upon the decks from the bellies of mothers, as they are ripped open, and of white milk flowing in streams mingled with blood. These enormities, which, if attempted within the territory of a civilized State, would speedily be made the subjects of criminal punishment, are not relevant, or are less relevant, in the discussion of the mere question of property.

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[1] On the occasion of the debate of Art. 544, which defined property, Napoleon expressed energetically the necessity of suppressing abuses. "The abuse of property," said he, "should be suppressed every time it becomes hurtful to society. Thus, it is not allowed to cut down unripe grain, to pull up famous grapevines. I would not suffer that an individual should smite with sterility 20 leagues of ground in a grain-bearing department, in order to make for himself a park thereof. The right of abuse does not extend so far as to deprive a people of its sustenance."

[2] Roman law says in this sense, sec. 2, I, De patr. pot. 1, 8: "Expedit enim reipublicæ ne sua re quis male utatur." Leibnitz further expands this principle of the Roman law by saying (De notionibus juris, etc.): "Cum nos nostraque Deo debeamus, ut reipublicæ, ita multo magis universi interest ne quis re sua male utatur."

It is not contended that in pelagic sealing (1) there can be any *selective* killing; or (2), that a great excess of females over males is not slain; or (3), that a great number of victims perish from wounds, without being recovered; or (4), that in most cases the females killed are not either heavy with young, or nursing mothers; or (5), that each and every of these incidents can not be avoided by the *selective* killing which is practiced on the breeding islands. We do not stop to discuss the idle questions whether this form of slaughter will actually *exterminate* the herds, or *how long* it may take to complete the destruction. It is enough for the present purpose to say that it is *simple destruction.* It is destructive, because it does not make, or aim to make, its draft upon the *increase*, which consists of the superfluous *males*, but, by taking females, strikes directly at the stock, and strikes at the stock in the most damaging way, by destroying unborn and newly-born pups, together with their mothers. Whoever undertakes to set up a *moral* right to prosecute this mode of slaughter on the ground that it will not necessarily result in complete destruction, must maintain that while it may be against the law of nature to work *complete* destruction, it is yet lawful *to destroy!* But what the law of nature forbids is any destruction at all, unless it is necessary. To destroy a *little*, and to destroy *much*, are the same crimes.

If there were even something less than a *right*, or rather some *low degree* of right—for nothing other than *rights* can be taken notice of here—some mere *convenience*, it might be worthy of consideration; but there is none. It can not even be said that pelagic sealing may furnish to the world a seal-skin at a lower price. Nothing can be plainer than that it is the most expensive mode of capturing seals. It requires the expenditure of a vast sum in vessels, boats, appliances, and human labor, which is all unnecessary, because the entire increase can be reaped without them. This unnecessary expense is a charge upon the consumer and must be reimbursed in the price he pays. In no way can pelagic sealing result in a cheapening of the product, except upon the assumption that the stock of seals is inexhaustible, and that the amount of the pelagic catch is an addition to the total catch, which might be made on the land if capture were restricted to the land; and this assumption is admitted on all hands, and even by the Commissioners of Great Britain, to be untrue.

If there were any *evil, or inconvenience* even, to be apprehended from a confinement of the capture of the seals to the breeding places, it might serve to arrest attention; but there is none. Much is said, indeed, in the Report of the Commissioners of Great Britain concerning a supposed *monopoly* which would thus be secured, as is pretented, to the lessces of the breeding islands which would enable them to exact an excessive price for skins; but this notion is wholly erroneous.

The annual drafts made at the island from the increase of the herds are not made for, and can not be monopolized, or appropriated, by the United States. They are made for mankind everywhere, and find their way to those who want them and are able to procure them wherever upon the face of the world they may dwell. To the owners of these islands, whoever they may be, they are intrinsically useless, except the insignificant number which may be useful for food or clothing. Their only value to them is as articles of commerce, as means by which needed commodities may be obtained from others who may have a superior desire for the benefits afforded by these animals. They are furnished through the instrumentality of commerce to those who want them upon the same terms upon which they are furnished to the citizens of the United States. The human race thus perfectly secures to itself the benefit which nature intended the animal should supply. Nor can the United States exact from the world whatever price it pleases for the product of the animal. It can not exact a penny more than the world is willing to give; and this, as in the case of every other commodity, is its just value. The cost of production, and the operation of supply and demand will determine the price of this, as of every other, commodity. Any other mode of capturing the animal for the market is obviously and confessedly more expensive, and must necessarily, other things being equal, involve an increased price, and simply impose an additional tax upon the consumer.

There are, indeed, instances of commodities in which the possible supply greatly exceeds the wants of the world, and where, if the whole product were thrown upon the market, it would become almost worthless, producing a sum much less than would have been gained had a comparatively small part only been offered. In such cases, if the sources of supply are a monopoly under a single direction, a large profit may sometimes be secured by an *artificial* limitation of the supply. It is said that the Dutch once found an advantage like this from a voluntary destruction of a large part of the product of the Spice Islands. But the case of the lessees of the Pribilof Islands is the opposite of this. They never can be even tempted to limit the supply. Nature herself has limited it all too rigidly. A large profit is derivable from every seal which prudence will permit to be taken. The temptation is to take too largely. *Abstinence*, and not *waste*, is the true policy. Indeed, the Report of the Commissioners of Great Britain makes it a principal charge against the management of the lessees that they make drafts upon the herds too large, instead of too small. Now, where the entire product of a source of supply is thrown upon the market, the price will be governed by the demand. The world will pay a certain amount for it and no more; and the circumstance that there is a monopoly of the commodity is unimportant.[1]

Divers charges are made in the Report of the British Commissioners of neglect and mismanagement by the lessees of the islands in the conduct of the business of caring for the seals and making the annual drafts from the herds. These topics have but a small measure of relevancy here. They are, with some unimportant exceptions, wholly denied, and will be elsewhere in this argument shown to be erroneous. But if it be intended by these charges to show that the prime object of the law of nature to make the increase of animals available to man, and at the same time to preserve the stock, is not most certainly gained in the case of an animal like the seal by declaring a property interest in those who have the power to secure it, some observations upon them are pertinent here. In this aspect these charges proceed upon the assumption that a scheme of protection by care, industry, and selective killing is necessary. If this be so, when and how can it be adopted and maintained except through the recognition of a property interest? It can not be questioned that this care and prudence are best secured by bringing into play the motive of self-interest. How can this be done except through the recognition of a property interest? What other device has human society found in any stage of civilization in any land or in any age? What new substitute has the wisdom of these Commissioners to suggest? Is it necessary to tell the breeder of sheep that he must preserve his flocks and make his main drafts for the market upon his superfluous males? It may be admitted that the United States may sometimes fall into errors and neglects against their own interest. They assert for themselves no infallibility; but they do insist that there is no error and no neglect which they could as owners and cultivators of these herds commit which would be in violation of the teachings of science and the laws of nature and operate to obstruct the enjoyment by mankind of the full product of the animal, which would not at the same time, and in larger measure, result in loss and injury to themselves. They have not and can not have, upon the grounds taken in this argument, any interest which, in the slightest degree, conflicts with that of the world at large. They would be grateful to have any errors in the management by them pointed out, to the end that they might apply a remedy. And what is true in respect of the United States is true also of their lessees. The latter can have no interest not in harmony with the interests of all. This observation is subject to a qualification limited to lessees whose lease is about to expire. An outgoing tenant is, indeed, sometimes under a temptation to commit waste. Against this possible mischief the United States have endeavored to guard by the policy of making long leases. It is believed to have been entirely effectual.

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[1] Mill. Pol. Econ., Book II, Chap. 5, § 2.

But all suggestions of the insufficiency of the guaranties furnished by a recognition of a property interest to carry out the dictates of science and natural law in respect to animals having a nature and habits such as the fur-seal exhibits are absolutely silenced by a reference to the conclusive teachings of actual and long experience. Russia enjoyed during the whole period of her occupation of the islands the full benefit practically of a property interest. She maintained an exclusive dominion of the herds upon the land, and no attempt to interfere with them by pelagic sealing was made. By her care, industry, and self-denial, tempted and rewarded by the profits of the industry, the normal numbers of the herds were maintained, and at the same time large annual drafts were made. And when, as happened more than once from exceptional causes which could not be prevented, the numbers were greatly reduced, a more rigid and self-enforced abstinence brought about a full restoration. At the beginning of the occupation of the United States, and before their authority and oversight were fully established, an irregular and excessive slaughter again greatly reduced the herds, and this damage was again fully repaired by an exercise of similar abstinence. The numbers were, perhaps, more than restored, and it became possible to make larger drafts than had ever been taken under the Russian management without any discoverable diminution of the stock; and there is no reason to suppose that such drafts might not have been continued indefinitely had not the destructive warfare by a constantly increasing fleet of Canadian sealers made it impossible.

The experience at the Commander Islands has been the same. The exercise of art, industry, and self-denial produced by the operation of the same motive has been followed by the reward of still abundant herds.

Nor is there any obstacle in the way of a recognition of a property interest growing out of any difficulty in *identifying* the Alaskan herd upon the high seas. Suggestions of a possible commingling with the herds belonging to the Russian islands on the western side of the Pacific and Bering Sea are contained in the Report of the British Commissioners; but these are coupled with the admission that this commingling, if it exist at all, is confined to a few individuals. They are supported by no evidence. The Russian herds are separated by a broad tract, hundreds of miles in width, and it seems entirely certain that all seals found on the eastern side of the Pacific and Bering Sea are members of the Alaskan herds.

It may be urged, as an objection to the recognition of a property interest in the United States, that it would be inconsistent with the continued pursuit of seals by the Indians on the Northwest coast for the purposes of food and clothing. This consideration deserves respectful attention. It is the only form of capturing seals upon the high seas which can assert for itself a moral foundation under the law of nature. Attention has more than once been called in this argument to the different degrees of the extension of the institution of property in barbaric and in civilized life. The *necessities of society*, everywhere and at all times the measure of the extension of the institution, do not in barbaric life require a recognition of property in but comparatively few things. With a scanty and sparse population, little is required by way of cultivating the earth or its animals; and both can be, and generally are, allowed to remain in a wild condition, open to indiscriminate use. A full supply of the wants of such society in respect to most animals can be had by indiscriminate killing, without in the least degree endangering the stock. That peril is one which civilization brings along with it; and, as we have seen, the safeguard comes also in the shape of the extension of the institution of property. Nothing better illustrates this than the case of the fur-seals. Before the occupation of its haunts by civilized nations, the only draft made by man upon the prodigious herds was limited to a number sufficient to supply the wants of a few hundred people. But, after such occupation, through the instrumentality of commerce, the whole world made its attack. This demand, of course, could not be supplied consistently with the preservation of the species without an immediate change from barbaric to civilized methods; that is to say, from indiscriminate capture, which threatened the stock, to a selective capture confined to the increase.

But this condition creates no difficulty. The demand thus made is comparatively insignificant, and does not threaten any danger. The United States have no desire or intention to cut off from these rude inhabitants any of their means of subsistence. Their history and circumstances have made them familiar with the survivals of barbaric life in the midst of civilized conditions. They have steadily pursued the policy of securing to such tribes, as long as possible, the benefit of the sources of subsistence upon which they had been accustomed to rely. They suppose it may be safely left to them to insure to these people such an enjoyment of the seal herds as they originally had, or the property interest which they justly claim may be recognized *subject* to a reasonable use by the Indians upon the coast, such as they have heretofore enjoyed. But, surely, this claim of the Indians can not be made a cover for the prosecution of a destructive warfare upon a valuable race of animals. The civilized man can not assert for himself the license of the barbarian. If that can not be confined to the barbarian, it must be given up altogether. The exacting demands of civilization must be met by the methods of civilization.

It may be asked whether the claim made by the United States goes to the extent of asserting a legal right of property in *any individual seal* which may at any time be found in the seas between the Pribilof Islands at the north and the coast of California at the south? And whether they would insist that in the case of any seal captured anywhere within those limits by any person other than a native Indian, and for purposes of scientific curiosity, or to satisfy hunger, a trespass had been committed upon the property of the United States, and an action might be maintained in their name in a municipal tribunal to recover damages, or for the recovery of the skin of the animal, if it should anywhere be found. The United States do not insist upon this extreme point, because it is not necessary to insist upon it. All that is needed for their purposes is that their *property interest* in the *herds* should be so far recognized as to justify a prohibition by them of any *destructive pursuit* of the animal calculated to injure the industry prosecuted by them on the islands upon the basis of their property interest. The conception of a *property interest in the herd*, as distinct from a particular title to every seal composing the herd, is clear and intelligible; and a recognition of this would enable the United States to adopt any reasonable measures for the protection of such interest.

It is, of course, necessary to an actual appropriation of property that the *intent* to appropriate should be evidenced by some act. This requirement has been fully satisfied by the United States. Every act by which that intent could be manifested has been performed. They have, in every practicable form, exercised art, industry, and self-denial in protecting the seals upon their soil and gathering the increase for the purposes of commerce with the world, and they have in all practicable forms, by their laws, by executive proclamation, and the exercise of force upon the high seas, endeavored to prohibit all invasions of their property interest.

It is believed that of the three conditions hereinbefore mentioned as requisite to assert a right of property in the seal herd, a compliance with the only one which can be the subject of debate, namely, *susceptibility of appropriation*, has now been fully established; and we need no longer delay the final conclusion that the United States, and they alone, having such a control over the Alaskan seal herd as enables them by the practice of art, industry, and self-denial to make the entire product fully available for the wants of mankind without diminishing the stock, and having asserted this control and exercised the requisite art, industry, and self-denial in order to accomplish that great end, have, under principles everywhere recognized, both in the law of nature and in the concurring municipal jurisprudence of all civilized States, a property interest in that herd.

It is a satisfaction to the undersigned, and, as they conceive, no unimportant feature of their argument, that in the foregoing discussion no selfish pretension had been asserted by the United States, nor one in the least degree hostile to Great Britain. The Government of the United States neither asserts any principle, nor asks for any adjudication which is not for the common interest of the world as much as for itself. The fundamental truth that this useful race of animals is the property of mankind is not changed by the circumstance that the custody and defense of it have fallen to the lot of the United States. Their appearance as a litigant in this forum may be said, in a very just sense, to be fortuitous. The *real* controversy is between those, wherever they may dwell, who *want* the seals, and the Canadian *pelagic sealers*, who are threatening the extermination of them. If that danger can be averted by the method which alone can be effective, the recognition of a property interest in the United States, the benefit will accrue equally to all. The seal-skins will be furnished to the citizens of Great Britain and of all other nations upon the same terms upon which they are obtainable by citizens of the United States. The large interests of Great Britain in the manufacture of the skins will be relieved from the peril which threatens them. None will be losers, save those who are engaged in the cruel pursuit, forbidden by the law of nature, and by every sentiment of humanity, of destroying this useful race of animals. And the loss even to them would be comparatively small, for the pursuit under present conditions can not continue for more than a very short period.

The United States may, indeed, derive a profit peculiar to themselves as the cultivators of the herd; but this is the just reward of their industry, abstinence, and care, and no more than every other nation in respect to products peculiar to itself. Without these voluntary efforts the herds would be speedily swept away. Their present existence and numbers are absolutely due to these efforts. It is by such means alone that nature makes her gifts fully available to their desired extent to all nations. The advantages which, in the partition among nations, have fallen under the power of the United States, it is their duty, and their duty to mankind, to improve. The rights and interests of mankind are properly asserted in this international forum; but they can be asserted only through the United States. If the world has the right, as it certainly has, to call upon that nation to make the benefits which nature has assigned to its custody available, it must clothe it with the powers which are requisite to that end.

If the United States have, as has now been shown, a property interest in the Alaskan herd, the undersigned conceives it to be a certain consequence that they have the right to protect it anywhere upon the high seas against injury or invasion, by such reasonable exercise of force as may be necessary. This proposition will be fully discussed in connection with the subject next to be considered, of the rights acquired by the United States in the sealing industries carried on by them upon the Pribilof Islands.

If the foregoing argument is successful in showing that the United States have a property in the Alaskan seal herd their right to protect that property anywhere upon the seas where it and they have the right *to go* is a proposition scarcely open to question. The rights of a nation of all descriptions upon the high seas are uniformly protected by the direct exercise of the powers of the nation. There is no other way of protecting them. There is no general sovereign or tribunal over nations before which an alleged trespassing nation can be summoned for judgment. But the nature and extent of this self-protection will be fully discussed under the next head of this argument, devoted to that aspect of the property question particularly presented by the sealing industry maintained by the United States upon the Pribilof Islands. If they have the right to protect that *industry* against invasion by acts committed upon the high seas, they have, *a fortiori*, the same right to protect their *property* on that element.

James C. Carter.

# APPENDIX TO PART THIRD, DIVISION I (MR CARTER'S ARGUMENT).

## AUTHORITIES UPON THE SUBJECT OF PROPERTY IN ANIMALS FERÆ NATURÆ.

[From Studies in Roman Law, by Lord Mackenzie (6th Edition), Edinburgh and London, 1886, chapter III, page 174.]

*Wild animals.*—All wild animals, whether beasts, birds or fish, fall under this rule, so that even when they are caught by a trespasser on another man's land they belong to the taker, unless they are expressly declared to be forfeited by some penal law, (Inst., 2, 1, 12; Gaius, 2, 66–69; Dig., 41, 1, 3, pr. 55). Deer in a forest, rabbits in a warren, fish in a pond, or other wild animals in the keeping or possession of the first holder can not be appropriated by another unless they regain their liberty, in which case they are free to be again acquired by occupancy. Tame or domesticated creatures, such as horses, sheep, poultry, and the like, remain the property of their owners, though strayed or not confined. The same rule prevails in regard to such wild animals already appropriated as are in the habit of returning to their owners, such as pigeons, hawks in pursuit of game, or bees swarming while pursued by their owners (Inst., 2, 1, 14, 15).

[From Gaius's Elements of Roman Law, translated by Edward Poste (2d ed.), Oxford, 1875.]

SEC. 68. In those wild animals, however, which are habituated to go away and return, as pigeons, and bees, and deer, which habitually visit the forests and return, the rule has been handed down that only the cessation of the instinct of returning is the termination of ownership, and then the property in them is acquired by the next occupant; the instinct of returning is held to be lost when the habit of returning is discontinued.

[From Von Savigny on Possession in the Civil Law, compiled by Kelleher.]

With respect to the possession of animals these rules are to be applied thus:

First. Tame animals are possessed like all other movables, *i.e.*, the possession of them ceases when they can not be found. Second. Wild animals are only possessed so long as some special disposition (custodia) exists which enables us actually to get them into our power. It is not every custodia, therefore, which is sufficient; whoever, for instance, keeps wild animals in a park, or fish in a lake, has undoubtedly done something to secure them, but it does not depend on his mere will, but on a variety of accidents whether he can actually catch them when he wishes, consequently, possession is not here retained; quite otherwise with fish kept in a stew, or animals in a yard, because then they may be caught at any moment (lib. 3, secs. 14, 15, de poss). Third. Wild beasts, tamed artificially, are likened to domesticated animals so long as they retain the habit of returning to the spot where their possessor keeps them (*donec animum*, i. e., *consuetudinem*, *revertendi habent*).

[From Puffendorf, Law of Nature and Nations, lib. III, cap. 1, sec. 3.]

Although a loss seems to refer properly to property, yet by us it will be generally accepted as embracing all injury that relates to the body, fame and modesty of man. So it signifies every injury, corruption, diminution or removal of that which is ours, or interception of that, which in perfect justice we ought to have; whether given by nature or conceded by an antecedent human act or law; or, finally, the omission or denial of a claim which another may have upon us by actual obligation. To this tends the 13th Declamation of Quintilian, where he plainly shows that one had inflicted a loss who poisoned the flowers of his own garden whereby his neighbor's bees perished. Yet the convincing reason consists in this: Since all agree that bees are a wandering kind of animate life, and because they can in no way be accustomed to take their food from a given place; therefore, whenever there is a right of taking them, there also, it is understood, is laid a general injunction to be observed by all neighbors, to permit bees to wander everywhere without hindrance from anyone.

[From Bracton, lib. II, cap. 1.]

The dominion over things by natural right or by the right of nations is acquired in various ways. In the first place, through the first taking of those things which belong to no person, and which now belong to the King by civil right, and are not common as of olden time, such, for instance, as wild beasts, birds, and fish, and all animals which are born on the earth, or in the sea, or in the sky, or in the air; wherever they may be captured and wherever they shall have been captured, they begin to be mine because they are coerced under my keeping, and by the same reason, if they escape from my keeping, and recover their natural liberty they cease to be mine, and again belong to the first taker. But they recover their natural liberty, then, when they have either escaped from my sight in the free air, and are no longer in my keeping, or when they are within my sight under such circumstances, that it is impossible for me to overtake them.

Occupation also comprises fishing, hunting, and capturing; pursuit alone does not make a thing mine, for although I have wounded a wild beast so that it may be captured, nevertheless it is not mine unless I capture it. On the contrary it will belong to him who first takes it, for many things usually happen to prevent the capturing it. Likewise, if a wild boar falls into a net which I have spread for hunting, and I have carried it off, having with much exertion extracted it from the net, it will be mine, if it shall have come into my power, unless custom or privilege rules to the contrary. Occupation also includes shutting up, as in the case of bees, which are wild by nature, for if they should have settled on my tree they would not be any the more mine, until I have shut them up in a hive, than birds which have made a nest in my tree, and therefore if another person shall shut them up, he will have the dominion over them. A swarm, also, which has flown away out of my hive, is so long understood to be mine as long as it is in my sight, and the overtaking of it is not impossible, otherwise they belong to the first taker; but if a person shall capture them, he does not make them his own if he shall know that they are another's, but he commits a theft unless he has the intention to restore them. And these things are true, unless sometimes from custom in some parts the practice is otherwise.

What has been said above applies to animals which have remained at all times wild; and if wild animals have been tamed, and they by habit go out and return, fly away, and fly back, such as deer, swans, seafowls, and doves, and such like, another rule has been approved, that they are so long considered as ours as long as they have the disposition to return; for if they have no disposition to return they cease to be ours. But they seem to cease to have the disposition to return when they have abandoned the habit of returning; and the same is said of fowls and geese which have become wild after being tamed. But a third rule has been approved in the case of domestic animals, that although tame geese and fowls have escaped out of my sight, nevertheless, in whatever place they may be, they are understood to be mine, and he commits a theft who retains them with the intention of making gain with them. This kind of occupation also takes place in the case of those things which are captured from the enemy, as, for instance, if free men have been reduced into slavery and shall escape from our power they recover their former state. Likewise the same species of occupation has a place in the case of those things which are common, as in the case of the sea and the seashore, in the case of stones and gems and other things found on the seashore. The same rule applies to islands which spring up in the sea and to things left derelict, unless there is a custom to the contrary in favor of the public treasury.

[From Bowyer, Modern Civil Law, page 72.]

Wild animals, therefore, and birds, and fish, and all animals that are produced in the sea, the heavens, and the earth, become the property, by natural law, of whoever takes possession of them. The reason of this is, that whatever is the property of no man becomes, by natural reason, the property of whoever occupies it.

It is the same whether the animals or birds be caught on the premises of the catcher or on those of another. But if any one enters the land of another to sport or hunt, he may be warned off by the owner of the land. When you have caught any of these animals it remains yours so long as it is under the restraint of your custody. But as soon as it has escaped from your keeping and has restored itself to natural liberty, it ceases to be yours, and again becomes the property of whoever occupies it. The animal is understood to recover its natural liberty when it has vanished from your sight, or is before your eyes under such circumstances that pursuit would be difficult.

Here we find the celebrated maxim of Gajus: *Quod nullius est, id ratione naturali occupanti conceditur.* It is founded on the following doctrine: Granting the institution of the rights of property among mankind, those things are each man's property which no other man has a right to take from him. Now, no one has a right to that which is *res nullius;* consequently, whoever possesses *rem nullius* possesses that which no one has a right to take from him. It is therefore his property.

But this general right of acquiring things by occupancy is subject to an important qualification. Grotius justly argues that it is not an absolute right, for though it is indeed founded on natural law, it is matter of permissive law, and not one which requires that full liberty should be left to men to avail themselves of it, since such liberty is unnecessary in many cases for the welfare of mankind, and may even, as Blackstone observes, be prejudicial to the peace of society if it be not limited by positive law. Barbeyrac also argues that where a country is taken possession of by a body of men, it becomes the property of that body or of the person who represents them, and that therefore the right of the individual members to take possession of portions of it or any of the things therein contained, may be restricted or taken away, according as the welfare of the community may demand. These principles are applicable to the whole jurisprudence of acquisition by occupancy.

The acquisition of things tangible must be made *corpore et animo*—that is to say, by an outward act signifying an intention to possess. The necessity of an outward act to commence holding a thing in dominion is founded on the principle that a will or intention can not have legal effect without an outward act declaring that intention, and on the other hand no man can be said to have the dominion over a thing which he has no intention of possessing as his. Thus a man can not deprive others of their right to take possession of vacant property by merely considering it as his, without actually appropriating it to himself; and if he possesses it without any will of appropriating it to himself it can not be held to have ceased to be *res nullius.*

The intention to possess is to be presumed wherever the outward act shows such an intention, for that is to be presumed which is most probable.

The outward act or possession need not, however, be manual, for any species of possession, or, as the ancients expressed it, *custodia*, is a sufficient appropriation.

The general principle respecting the acquisition of animals *feræ naturæ* is, that it is absurd to hold anything to be a man's property which is entirely out of his power. But Grotius limits the application of that principle to the *acquisition* of things, and therefore justly dissents from the doctrine of Gajus given above, that the animal becomes again *res nullius* immediately on recovering its liberty, if it be difficult for the first occupant to retake it. He argues that when a thing has become the property of any one, whether it be afterwards taken from him by the act of man, or whether he lose it from a natural cause, he does not necessarily lose his right to it together with the possession; but that it is reasonable to presume that the proprietor of a wild animal must have renounced his right to it when the animal is gone beyond the hope of recovery and where it could not be identified. He, therefore, argues that the right of ownership to a wild animal may be rendered lasting, notwithstanding its flight, by a mark or other artificial sign by which the creature may be recognized.

With regard to fish, Voet argues that when they are included within artificial boundaries they are private property, but that when they are in a lake or other large piece of natural water, though the proprietor of the land may have a right of fishery there, yet the fish are in their natural state of liberty, and consequently they can not be his property until he has brought them within his power by catching them.

It was disputed among the ancient Roman jurisconsulti whether a wild animal becomes immediately the property of whoever wounds it so that it can be secured, or whether it becomes the property of him only who actually secures it. And Justinian confirmed the latter opinion, because many circumstances might occur to prevent the wounded animal being taken by him who wounded it.

Bees, also, are of a wild nature, and, therefore, they no more become the property of the owner of the soil by swarming in his trees than do the birds which build in them; and they are not his unless he inclose them in a hive. Consequently, whoever hives them makes them his own. And while they are wild any one may cut off the honeycombs, though the owner of the land may prevent this by warning off trespassers. And a swarm flying from a hive belongs to the owner of the hive so long as it is within his sight, but otherwise it is the property of whoever takes possession of it.

With regard to creatures which have the habit of going and returning, such as pigeons, they remain the property of those to whom they belong so long as they retain the *animus revertendi* or disposition to return. But when they lose that disposition they become the property of whomsoever secures them. And they must be held to have lost the *animus revertendi* as soon as they have lost the habit of returning. Such are the doctrines of the Roman law, which are conformable to the English law, with the qualification of Grotius, which is applicable to the case of all animals *feræ naturæ*, that is to say, that a mark or collar prevents the rights of the proprietor of a wild animal being extinguished by its escape from his sight and pursuit.

[From Cooper's Justinian (lib. II, tit. 1, secs. 11 *et seq.*).]

SEC. 11. *De Rebus Singulorum.*—There are various means by which things become private property. Of some we obtain dominion by the law of nature, which (as we have already observed) is also called the law of nations; of others, by the civil law. But it will be most convenient to begin from the more ancient law; that law, which nature established at the birth of mankind; for civil laws could then only begin to exist when cities began to be built, magistracies to be created, and laws to be written.

SEC. 12. *De Occupatione Ferarum.*—Wild beasts, birds, fish, and all animals, bred either in the sea, the air, or upon the earth, so soon as they are taken, become by the law of nations, the property of the captor; for natural reason gives to the first occupant, that which had no previous owner; and it is not material whether the man takes wild beasts or birds upon his own, or upon the ground of another; although whoever hath entered into the ground of another for the sake of hunting or fowling, might have been prohibited by the proprietor, if he had foreseen the intent. Whatever of this kind you take, is regarded as your property while it remains under your coercion; but when it hath escaped your custody, and recovered its natural liberty, it ceases to be yours and becomes the property of the first who seizes it. It is understood to have recovered its natural liberty, if it hath escaped your sight; or although not out of sight, yet if it can not be pursued and retaken without great difficulty.

SEC. 13. *De Vulneratione.*—It hath been questioned whether a wild beast belongs to him, by whom it hath been so wounded, that it may be taken. And, in the opinion of some, it doth so, as long as he pursues it; but, if he quits the pursuit, it ceases to be his, and again becomes the right of the first occupant. Others have thought that property in a wild beast must attach to the actual taking it. We confirm this latter opinion; because many accidents happen, which prevent the capture.

SEC. 14. *De Apibus.*—Bees also are wild by nature; therefore, although they swarm upon your tree, they are not reputed, until they are hived by you, to be more your property than the birds which have nests there; so, if any other person inclose them in a hive, he becomes their proprietor. Their honeycombs also, if any, become the property of him who takes them; but clearly, if you observe any person entering into your ground, the object untouched, you may justly hinder him. A swarm which hath flown from your hive is still reputed to continue yours as long as it is in sight and may easily be pursued, but, in any other case it will become the property of the occupant.

SEC. 15. *De Pavonibus, et Columbis, et Cœteris Animalibus Mansuefactis.*—Peacocks and pigeons are also naturally wild; nor is it any objection that after every flight, it is their custom to return; for bees that are naturally wild do so too. Some have had deer so tame that they would go to the woods and return at regular periods; yet no one denies but that deer are wild by nature. But with respect to animals, which go and return customarily, the rule is, that they are considered yours, as long as they retain an inclination to return; but, if this ceases, they cease to be yours; and will again become the property of those who take them.

[The Case of Swans. (7 Coke, 15 b.)]

It was decided that a prescription to have all wild swans which are *feræ naturæ*, and not marked, building their nests, breeding, frequenting within a particular creek, is not good. For "the prescription was insufficient, for the effect of the prescription is to have all wild swans, which are *feræ naturæ*, within the said creek. And such prescription for a warren would be insufficient, as for example, to have all parttridges *nidificantes gignentes*, and frequenting within his manor. But he ought to say to have free warren of them within his manor; he can not have them *jure privilegii* but so long as they are within the place. But it was resolved that if the defendants had alleged that within the said creek there had been time out of mind a game of wild swans not marked, building and breeding; and then had prescribed, that such abbot and all his predecessors had used at all times to have and to take to their use some of the said game of wild swans and their cignets within the said creek, it had been good; for all those swans are royal fowls, yet in such manner a man may prescribe in them; for that may have a lawful beginning by the King's grant. For in the 30th Edward III the King granted to C. W. all wild swans unmarked between Oxford and London for seven years. A like grant was made of wild swans unmarked in the County of Cambridge to Bereford, K. T. G., by which it appears that the King may grant wild swans unmarked; and by consequence a man may prescribe in them in a certain place because it may have a lawful beginning. And a man may prescribe to have a royal fish within his manor as it is held in 39th Edward III, 35, for the reason aforesaid and yet without prescription they do belong to the King by his prerogative."

In the same case it was said that there are three manner of property rights; property absolute, property qualified, property possessory. Property qualified and possessory a man may have in those animals which are *feræ naturæ*, and to such property a man may attain by two ways: by industry, or by *ratione impotentiæ et loci*. By industry as by taking them or by making them *mansueta* or *domestica*. But in those which are *feræ naturæ* and by industry are made tame a man hath but a qualified property in them, namely, so long as they remain tame, for if they do attain to their natural liberty and have not *animus revertendi*, the property is lost. *Ratione impotentiæ et loci* as if a man has young goshawks or the like which are *feræ naturæ* and they build in my land, I have possessory property in them, for if one takes them when they can not fly the owner of the soil shall have an action of trespass. But when a man hath savage beasts *ratione privilegii*, as by reason of a park, warren,

&c., he hath not any property in the deer, or conies, or pheasants, therefore in his action he shall not say *suos*, for he hath no property in them and they do belong to him for his game and pleasure so long as they remain in the privileged place.

It was resolved that all white swans not marked, which have gained their natural liberty, and are swimming in an open and common river, might be siezed to the King's use by his prerogative, because *Volatilia (quæ sunt feræ naturæ) alia sunt regalia, alia communia;* * * * as a swan is a royal fowl; and all those, the property whereof is not known, do belong to the King by his prerogative; and so whales, and sturgeons, are royal fish, and belong to the King by his prerogative. * * * But it was resolved also that the subject might have property in white swans not marked, as some may have swans not marked in his private waters, the property of which belongs to him and not to the King; and if they escape out of his private waters into an open and common river, he may bring them back and take them again. And therewith agreeth Bracton (lib. 2, c. 1, fol. 9): *Si autem animalia fera facta fuerint mansueta, et ex consuetudine eunt et redeunt, volant et revolant, (ut sunt cervi, cigni, pavones, et columbæ, et hujusmodi) eousque nostra intelligantur quamdiu habuerint animum revertendi.* But if they have gained their natural liberty, and are swimming in open and common rivers, the King's officer may seize them in the open and common river for the King; for one white swan without such pursuit as aforesaid can not be known from another; and when the property of a swan can not be known, the same being of its nature a fowl royal, doth belong to the King; and in this case the book of 7 H, 6, 27, b, was vouched, where Sir John Tiptoft brought an action of trespass for wrongful taking of his swans; the defendant pleaded that he was seized of the lordship of S, within which lordship all those whose estate he hath in the said lordship had had time out of mind all estrays being within the same manor; and we say, that the said swans were estraying at the time in the place where, &c., and we as landlords did seize and make proclamations in fairs and markets; and so soon as we had notice that they were your swans, we delivered them to you at such a place.

The plaintiff replied that he was seized of the manor of B, joining to the lordship of S, and we say, that we and our ancestors, and all those, etc., have used time out of mind to have swans swimming through all the lordship of S, and we say, that long time before the taking we put them in there, and gave notice of them to the defendant that they were our swans, and prayed his damages. And the opinion of Strange there was well approved by the court, that the replication was good; for when the plaintiff may lawfully put his swans there, they cannot be estrays, no more than the cattle of any one can be estrays in such place where they ought to have common; because they are there where the owner hath an interest to put them, and in which place they may be without negligence or laches of the owner. Out of which case these points were observed concerning swans.

1. That every one who hath swans within his manor—that is to say, within his private waters—hath a property in them, for the writ of trespass was of wrongful taking his swans, scil. *Quare cignos suos*, etc.

2. That one may prescribe to have a game of swans within his manor, as well as a warren or park.

3. That he who hath such a game of swans may prescribe that his swans may swim within the manor of another.

4. That a swan may be an estray, and so can not any other fowl, as I have read in any book.

[Child *v.* Greenhill (3 Croke, 553).]

Trespass for entering and breaking plaintiff's close and fishing and taking fish in his several fishery. Contended for the defendant that he could not say "his" fishes, for he hath not any property in the fish until he takes them and has them in his possession. Attorneys for plaintiff maintained that they were in his several fishery, and that he might say "his" fishes, for there was not any other that might take them, and all the court was of that opinion.

[Keeble *v.* Hickeringill, 11 East's, 574.]

Action upon the case. Plaintiff declares that he was, November 8, in the second year of the Queen, lawfully possessed of a close of land called Minott's Meadow, *et de quodam vivario vocato*, a decoy pond to which divers wild fowl used to resort and come; and the plaintiff had, at his own costs and charges, prepared and procured divers decoy ducks, nets, machines, and other engines for the decoying and taking of the wild fowl, and enjoyed the benefit in taking them; the defendant, knowing which, and intending to damnify the plaintiff in his vivary, and to fright and drive away the wild fowl used to resort thither, and deprive him of his profit, did on the 8th of November, resort to the head of the said pond and vivary, and did discharge six guns laden with gunpowder, and with the noise and stink of the gunpowder did drive away the wild fowl then being in the pond; and on the 11th and 12th days of November the defendant, *with design to damnify the plaintiff and fright away the wild fowl*, did place himself with a gun near the vivary, and there did discharge the said gun several times that was then charged with the gunpowder against the said decoy pond, whereby the wild fowl were frighted away, and did forsake the said pond. Upon not guilty pleaded, a verdict was found for the plaintiff and £20 damages.

Holt, C. J.: I am of opinion that this action doth lie. It seems to be new in its instance, but is not new in the reason or principle of it. For, first, this using or making a decoy is lawful; secondly, this employment of his ground to that use is profitable to the plaintiff, as is the skill and management of that employment. As to the first, every man that hath a property may employ it for his pleasure and profit, as for alluring and procuring decoy ducks to come to his pond. To learn the trade of seducing other ducks to come there in order to be taken is not prohibited either by the law of the land or the moral law; but it is as lawful to use art to seduce them, to catch them, and destroy them for the use of mankind, as to kill and destroy wild fowl or tame cattle. Then when a man useth his art or his skill to take them to sell and dispose of for his profit, this is his trade; and he that hinders another in his trade or livelihood is liable to an action for so hindering him.

* * * * * * *

And when we do know that of long time in the kingdom these artificial contrivances of decoy ponds and decoy ducks have been used for enticing into these ponds wild fowl in order to be taken for the profit of the owner of the pond, who is at the expense of servants, engines, and other management, whereby the markets of the nation may be furnished, there is great reason to give encouragement thereunto; that the people who are so instrumental by their skill and industry so to furnish the markets should reap the benefits and have their action. But, in short, that which is the true reason is that this action is not brought to recover damage for the loss of the fowl, but for the disturbance.

In the report of this same case in the 11th Modern, 75, Lord Chief Justice Holt says: "Suppose the defendant had shot in his own ground; if he had occasion to shoot it would be one thing, but to shoot on purpose to damage the plaintiff is another thing and a wrong." It should seem to be as if he fired for the purpose of disturbing the wild fowl in his neighbor's decoy, that he might take the chance of benefiting himself by shooting them on the wing in consequence of such disturbance.

[Amory *v.* Flyn (10 John., 102).]

*In error, on certiorari*, from a justice's court. Amory brought an action of trover against Flyn before the justice for two geese. There was a trial by jury. The plaintiff proved a demand of the geese and a refusal by the defendant unless the plaintiff would first pay 25 cents for liquor furnished to two men, who had caught the geese and pledged them to the defendant for it. The geese were of the wild kind, but were so tame as to eat out of the hand. They had strayed away twice before, and did not return until brought back. The plaintiff proved property in them, and that after the geese had left his premises the son of the defendant was seen pursuing them with dogs, and was informed that they belonged to the plaintiff. The jury found a verdict for the defendant, on which the justice gave judgment.

*Per Curiam:* The geese ought to have been considered as reclaimed so as to be the subject of property. Their identity was ascertained; they were tame and gentle, and had lost the power or disposition to fly away. They had been frightened and chased by the defendant's son, with the knowledge that they belonged to the plaintiff, and the case affords no color for the inference that the geese had regained their natural liberty as wild fowl, and that the property in them had ceased. The defendant did not consider them in that light, for he held them in consequence of the *lien* which he supposed he had acquired by the pledge. This claim was not well founded, for he showed no right in the persons who pawned them for the liquor so to pawn them, and he took then at his peril. Here was clearly an invasion of private right. If the person who took the geese, or who had kept them, had been put to necessary expense in securing them, such expense ought to have been refunded; but no such expense was shown or pretended, and to sanction such a pawn as this would lead to abuse and fraud.

A person who takes up an *estray* can not levy a tax upon it but by way of amends of indemnity. This is the doctrine of the common law (1 Roll. Abr., 879, c. 5; Noy's Rep., 144; Salk., 686), and the Roman lawyers equally denied to the finder of any lost property a *reward* for finding it *non probe petat aliquid*, says the Digest (Dig. 47, 2, 43, 9). And, indeed, the civil law (*ibid.* s. 4) considered it as a theft to convert to one's use, *animo lucrandi* property found, without endeavors to find the owners, or without intention to restore it. But theft was not always considered, in that law, in the very odious sense of our common law; for as to the class of thefts denominated thefts not *manifest*, and of which this was one, that law provided only a civil remedy of double damages. A. Gellius (Noct. Alt. lib. 11, c. 18), who cites the very passage in the civil law which declares such conduct theft, gives that appellation to many acts which our law does, and ought to regard as trespasses merely; such, for instance, as ouster of possession of land. But, taking the civil law in the milder sense, it sufficiently shows what was considered, in the wisdom of the ancients, as right and duty in this case. The practice of mankind is apt to be too lax on this subject; and, when occasion offers, courts ought to lay down and enforce the just and benevolent lesson of morality and law.

The verdict, in this case, being against law and evidence, can not be supported. Judgment reversed.

[Goff *vs.* Kilts (15 Wend., 550).]

"The owner of *bees* which have been reclaimed, may bring an action of *trespass* against a person who cuts down a tree into which the bees have entered *on the soil of another*, destroys the bees and takes the honey.

"Where bees take up their abode in a tree, they belong to the *owner of the soil*, if they are *unreclaimed*, but if they have been *reclaimed*, and their owner is able to identify his property, they do not belong to the owner of the soil, but to him who had the former possession, although he can not enter upon the lands of the other to retake them without subjecting himself to an action of trespass."

Error from the Madison common pleas. Kilts sued Goff in a justice's court in *trespass* for taking and destroying a swarm of *bees*, and the honey made by them. The swarm left the hive of the plaintiff, flew off and went into a tree on the lands of the Lenox Iron Company. The plaintiff kept the bees in sight, followed them, and marked the tree into which they entered. Two months afterwards the tree was cut down, the bees killed, and the honey found in the tree taken by the defendant and others. The plaintiff recovered judgment, which was affirmed by the Madison common pleas. The defendant sued out a writ of error.

By the court, Nelson, J.: Animals *feræ naturæ*, when reclaimed by the art and power of man, are the subject of a qualified property; if they return to their natural liberty and wildness, without the *animus revertendi*, it ceases. During the existence of the qualified property, it is under the protection of the law the same as any other property, and every invasion of it is redressed in the same manner. *Bees* are *feræ naturæ*, but when hived and reclaimed, a person may have a qualified property in them by the law of nature, as well as the civil law. Occupation, that is hiving or inclosing them, gives property in them. They are now a common species of property, and an article of trade, and the wildness of their nature, by experience and practice, has become essentially subjected to the art and power of man. An unreclaimed swarm, like all other wild animals, belongs to the first occupant—in other words, to the person who first hives them; but if the swarm fly from the hive of another, his qualified property continues so long as he can keep them in sight, and possesses the power to pursue them. Under these circumstances, no one else is entitled to take them. (2 Black. Comm., 393; 2 Kent's Comm., 394.)

The question here is not between the owner of the soil upon which the tree stood that included the swarm, and the owner of the bees; as to him, the owner of the bees would not be able to regain his property, or the fruits of it, without being guilty of trespass; but it by no means follows, from this predicament, that the right to the enjoyment of the property is lost; that the bees therefore become again *feræ naturæ* and belong to the first occupant. If a domestic or tame animal of one person should stray to the inclosure of another, the owner could not follow and retake it without being liable for a trespass. The absolute right of property, notwithstanding, would still continue in him. Of this there can be no doubt. So in respect to the qualified property in the bees. If it continued in the owner after they hived themselves and abode in the hollow tree, as this qualified interest is under the same protection of law as if absolute, the like remedy existed in case of an invasion of it. It can not, I think, be doubted that if the property in the swarm continues while within sight of the owner—in other words, while he can distinguish and identify it in the air—that it equally belongs to him if it settles upon a branch or in the trunk of a tree, and remains there under his observation and charge. If a stranger has no right to take the swarm in the former case, and of which there seems no question, he ought not to be permitted to take it in the latter, when it is more confined and within the control of the occupant.

It is said the *owner of the soil* is entitled to the tree and all within it. This may be true, so far as respects an unreclaimed swarm. While it remains there in that condition, it may, like birds or other game, (game laws out of the question) belong to the owner or occupant of the forest, *ratione soli.* According to the law of nature, where prior occupancy alone gave right, the individual who first hived the swarm would be entitled to the property in it; but since the institution of civil society, and the regulation of the right of property by its positive laws, the forest as well as the cultivated field, belong exclusively to the owner, who has acquired a title to it under those laws. The natural right to the enjoyment of the sport of hunting and fowling, wherever animals *feræ naturæ* could be found, has given way, in the progress of society, to the establishment of rights of property better defined and of a more durable character. Hence no one has a right to invade the enclosure of another for this purpose. He would be a trespasser, and as such liable for the game taken. An exception may exist in the case of noxious animals, destructive in their nature. Mr. Justice Blackstone says: If a man starts game in another's private grounds, and kills it there, the property belongs to him in whose ground it is killed, because it was started there, the property arising *ratione soli.* (2 Black. Com., 419.) But if animals *feræ naturæ* that have been *reclaimed,* and a qualified property obtained in them, escape into the private grounds of another in a way that does not restore them to their natural condition, a different rule obviously applies. They are then not exposed to become the property of the first occupant. The right of the owner continues, and though he can not pursue and take them without being liable for a trespass, still this difficulty should not operate as an abandonment of the animals to their former liberty.

The rights of both parties should be regarded and reconciled, as far as is consistent with a reasonable protection of each. The case of Heermance *vs.* Vernay (6 Johns. R., 5), and Blake *vs.* Jerome (14 *id.*, 406), are authorities for saying, if any were wanted, that the inability of the owner of a personal chattel to retake it while on the premises of another, without committing a trespass, does not impair his legal interest in the property. It only embarrasses the use or enjoyment of it. The owner of the soil, therefore, acquiring no right to the property in the bees, the defendant below can not protect himself by showing it out of the plaintiff in that way. It still continues in him, and draws after it the possession sufficient to maintain this action against a third person, who invades it by virtue of no other claim than that derived from the law of nature. This case is distinguishable from the cases of Gillett *vs.* Mason (7 Johns. R., 16), and Ferguson *vs.* Miller (1 Cowen, 243). The first presented a question between the finder and a person interested in the soil; the other between two persons, each claiming as the first finder. The plaintiff in the last case, though the first finder, had not acquired a qualified property in the swarm, according to the law of prior occupancy. The defendant had. Besides, the swarm being unreclaimed from their natural liberty while in the tree, belonged to the owner of the soil *ratione soli*. For these reasons I am of opinion that the judgment of the court below should be affirmed. Judgment affirmed.

[The opinion of Baron Wilde in Blades *v.* Higgs (12 C. B. N. S., 512).]

I wish to add a few words, as I think the doctrine of animals *feræ naturæ* has in modern times been sometimes pushed too far. It has been urged in this case that an animal *feræ naturæ* could not be the subject of individual property. But this is not so; for the common law affirmed a right of property in animals even though they were *feræ naturæ;* if they were restrained either by habit or inclosure within the lands of the owner. We have the authority of Lord Coke's Reports for this right in respect of wild animals, such as hawks, deer, and game, if reclaimed, or swans or fish, if kept in a private moat or pond, or doves in a dove cote. But the right of property is not absolute; for, if such deer, game, etc., attain their wild condition again, the property in them is said to be lost.

The principle of the common law seems, therefore, to be a very reasonable one, for in cases where either their own induced habits or the confinement imposed by man have brought about in the existence of wild animals the character of fixed abode in a particular locality, the law does not refuse to recognize in the owner of the land which sustained them a property coëxtensive with that state of things. When these principles were applied to a country of few inclosures, as in old times, the cases of property in game would be few; but the inclosures and habits of modern times have worked a great change in the character of game in respect to its wildness and wandering nature; and there is a vast quantity of game in this country which never stirs from the inclosed property of the proprietor by whose care it is raised and on whose land it is maintained.

It is, I think, now too late for the courts of law to meet this change of circumstances by declaring a property in live game; but if the legislature should interfere, as was suggested in argument, by giving to the owner of lands a property in game, either absolute or qualified, so long as it remained on his land, it would only be acting in the spirit and policy of the common law.

Mellor, J., concurred. Judgment affirmed.

[Morgan and another, Executors of John, Earl of Abergavenny, deceased, *v.* William, Earl of Abergavenny (8 C. B., 768).]

This was an action of trover. * * * The defendant pleaded, first, not guilty, except as to the said causes of action as to twelve bucks, one stag, eight does, and four fawns, parcel of the said bucks, stags, does, and fawns, respectively, in the declaration mentioned; secondly, that, except as aforesaid, the said John, Earl of Abergavenny, in his lifetime was not possessed, neither were the plaintiffs, as executors as aforesaid, after the death of the said John, Earl of Abergavenny, possessed, of the said deer or other animals in the declaration mentioned, or any of them, as of his or their own property, respectively; thirdly, that, except as aforesaid, the said deer and other animals in the declaration mentioned were not, nor was any of them, captured and reclaimed from their natural and wild state, or tamed or kept confined or inclosed; fourthly, payment of £85 into court in respect of the excepted bucks, stags, does, and fawns.

The plaintiffs joined issue on the first three pleas and took the £85 out of court in satisfaction *pro tanto*.

The cause was tried before Coltman, J. and a special jury at the sittings at Westminster, after Hilary term, 1847.

The action was brought to recover the value of the deer which were in the park appertaining to Eridge Castle, in the County of Sussex, the principal country residence of the Earls of Abergavenny, at the time of the decease of John, the late earl, on the 12th of April, 1845.

The plaintiffs were Richard Morgan and Azariah Ellwood, the executors of the late earl, the defendant was his brother, who, the late earl having died a bachelor, succeeded to the title and to the family entailed estates.

At the time of the late earl's death, the deer in Eridge Park consisted of five hundred and forty head of fallow deer, and one hundred head of red deer in what was called the Deer Park, twelve bucks in a place called the New Park, and six stags and two bucks which were stalled for fatting.

Eridge Park was an ancient park, forming part of the ancient manor of Rotherfield—called in Domesday Book Reredfelle—which, it seems, was royal demesne of the fee of Odo, Bishop of Baieux, brother of William the Conqueror, and therefore held by the Saxon Earl Godwin. In Domesday Book it is thus described:

"The land consists of twenty-six carucates in demesne, four carucates and fourteen villeins with six bordarers, having fourteen ploughs. There are four servi and wood sufficient to feed four score hogs. There is a park. In the time of King Edward the Confessor, it was worth £16; and afterwards £14; now £12; and, nevertheless, renders £30."

The substance of the evidence given on the part of the plaintiffs was as follows:

In modern times, Eridge Old Park has consisted of about 900 acres, a great portion of which is of a rough, wild description, containing a considerable quantity of fern, brake, and gorse. The new park adjoining consists of about 200 acres. Some additions were about forty years ago made to the Old Park by the removal of portions of the ancient fences, and erecting paling round the land so added. The deer usually had the range of the Old Park, where they were attended by keepers and fed in the winter with hay, beans, and other food. The does were watched in the falling season, and the fawns marked as they were dropped, in order to ascertain their age and to preserve the stock. At times, certain of the deer were selected from the herd and caught, with the assistance of lurches muzzled, or with their teeth drawn, and turned into an inclosure in the new park, or into pens or stalls for the purpose of fattening them for consumption, or for sale to venison dealers. The ordinary mode of killing them was by shooting. There was a slaughter-house in the park for preparing and dressing the carcasses. Some years since a great number of deer were brought to Eridge from Penshurst and other places. Deer sometimes, though rarely, escaped from the park by leaping over the fence. Some of them were described as being very tame, coming close to the keepers when called at feeding times. Witnesses were also called to prove that of late years deer have been commonly bought and sold for profit like sheep or other animals kept for the food of man. * * *

On the part of the defendant the conversion was admitted; but i was insisted that Eridge Park was an ancient legal park, and that the deer therein, by the law of the land, were not personal property, but formed part of the inheritance. * * *

For the plaintiffs it was submitted that, although Eridge Park might originally have been a park in the strict sense of the term, having all the incidents of a legal park—vert, venison, and inclosure—it had ceased to bear that character, by reason of the manner in which it had in modern times been dealt with, it being essential that the boundaries of an ancient park should be strictly preserved, and that, by the mode in which the deer in question had been treated, they had ceased to be *feræ naturæ*, and had become mere personal property, like sheep or any other domestic animals.

The learned judge, in his summing up, told the jury that the main question for them to consider was, whether the deer in dispute were to be looked upon as wild, or as tame and reclaimed; and that it had been laid down by the best authorities upon the subject that deer in a park, conies in a warren, and doves in a dovecot, generally speaking, go with the inheritance to the heir, or, in a case like the present, where the estate does not go exactly in heirship, but under the limitations of an act of parliament, to the person next entitled under the parliamentary settlement; but that the rule was subject to this exception—that, if the animals are no longer in their wild state, but are so reduced as to be considered tame and reclaimed, in that case they go to the executors, and not to the heir. He then proceeded, in substance, as follows: A large body of evidence has been laid before you, for the purpose of satisfying you that Eridge Park was an ancient park, having all the incidents and privileges of an ancient park, to which rights formerly appertained which are now comparatively valueless. But the question will not turn upon whether Eridge was or was not an ancient park; though, at the same time, it may be desirable if you are able to form an opinion upon it, that you should state it. Undoubtedly, one who has an ancient park, having the rights and incidents of a legal park, ought to preserve the boundaries within which he claims to exercise those rights; and probably there can be no doubt that, if the boundaries are so effaced that they can not be distinctly ascertained, his franchise, as against the Crown, would be lost.

But that is a matter which does not, as it seems to me, very much concern the question now before us, because, though some rights might be forfeited by the destruction of the ancient boundaries, still the nature of the animals would remain unchanged. That deer, when caught and inclosed in a pen, would pass to the executors there can be no doubt, and probably if animals of this sort were inclosed in a small field, well fenced round and well kept, it could hardly be said that they were not so far reduced into immediate possession as to become personal property. It is quite admitted, upon the evidence on the one side and on the other, that there have been, from time to time, additions made to what formerly constituted Eridge Park, though there is some difference as to the quantity. And observing upon the documentary evidence put in on the part of the defendant, the learned judge said, with reference to the extract from Domesday Book and to the inquisition taken in the reign of Edward the Third upon the death of Hugh de Spencer, that at that period, when the forest laws were in full vigor, whenever a "park" was mentioned it must be understood to mean a *legal* park. And he concluded by asking the opinion of the jury upon two questions which he gave them in writing; first, whether Eridge Park was an ancient park, with all the incidents of a legal park; secondly, whether the boundaries could be ascertained by distinct marks, telling them that the principal question was whether they found for the plaintiffs or for the defendant, the others being only incidental.

The jury retired, and after a protracted absence returned into court, the judge having left; when, upon the associate asking them whether they found for the plaintiffs or the defendant, the foreman answered:

"We find, first, that it was originally a legal park, but that its boundaries have been altered and enlarged; secondly, we find that the deer have been reclaimed from their natural wild state. What the effect of that opinion is we are not lawyers enough to say."

The associate declining to receive their verdict in that form, the jury again retired, and after a short absence returned into court, the foreman (addressing the associate) saying: "You may take it in the first instance as a verdict for the plaintiffs." The associate then asked, "Do you find that there was an ancient park, with the incidents of a legal park?" To which the foreman answered, "We find that it was originally a legal park, but that its boundaries have been altered and enlarged." Associate: "Do you find that there was an ancient park, with the incidents of a legal park?" Foreman: "Yes." Associate: "Do you find that there were distinct marks by which the boundaries could be ascertained?" Foreman: "Yes, there were."

The verdict was accordingly entered for the plaintiffs.

*Talfourd*, Sergeant, in the following Easter term, obtained a rule nisi for a new trial, on the grounds, first, that there had been no complete finding by the jury, they not having distinctly answered the real question which was submitted to them, viz, whether the deer were wild or reclaimed; secondly, that the learned judge misdirected the jury, in presenting the case to them as if the existence or nonexistence of Eridge Park, with all the legal incidents of a park, was a mere collateral question, whereas it was of the very essence of the inquiry (Co. Litt. 8 a.; The case of Swans; Davies *v.* Powell); thirdly, that there was no sufficient evidence to warrant the finding.

*Humphrey*, *Channell*, Sergt., and *Bovill*, in Easter term, 1848, showed cause in support of the verdict, and Talfourd and Byles, Terfts and Willes supported the rule to show cause.

Maule, J., now delivered the judgment of the court:

This case was argued in Easter term, 1848, before Lord Chief Justice Wilde and my brothers Coltman and Cresswell and myself. In the absence of the Lord Chief Justice, I now proceed to pronounce the judgment, which has been prepared by him, and in substance assented to by us.

This was an action of trover, brought to recover damages for the conversion of a number of deer. The declaration contained two counts. The first count stated that the testator, in his lifetime, was possessed of a certain number of bucks, does, and other descriptions of deer, being captured and reclaimed from their natural wild state and confined in the close of the testator, and that the plaintiffs, after his death, were possessed as executors, and that the defendants afterwards converted the deer, etc. The second count stated that the plaintiffs, as executors, were possessed of the like quantity of deer, which the defendant had converted, to the damage of the plaintiffs.

The defendant, except as to a certain number of bucks, does, and fawns, pleaded not guilty to the whole declaration; and, secondly, that the testator was not possessed, nor were the plaintiffs, as his executors, possessed, of the deer as alleged; thirdly, that except as to a certain number of bucks, does, and fawns, the deer alleged in the declaration were not captured, reclaimed, and tamed, or kept confined in inclosed grounds, as alleged; lastly, as to the excepted bucks, does, and fawns, the defendant paid the sum of £85 into court.

Issue was joined on these pleas.

The cause was tried before the late Mr. Justice Coltman, at the sittings in Middlesex, after Hilary term, 1847, when the jury found a verdict for the plaintiffs upon the issues—testator possessed—plaintiffs possessed—and that the deer were tame and reclaimed.

A rule nisi was afterwards obtained by the defendant in the following Easter term to show cause why there should not be a new trial upon the ground of misdirection, that there had been no sufficient verdict found by the jury, and that, if a sufficient verdict had been found, it was contrary to the evidence.

Several questions arose upon the trial—first, whether the land called Eridge Park, in the county of Sussex, was an ancient legal park; secondly, whether it continued to be a legal park, or whether it had become disparked by the addition of other lands to the original park, and by the removal, decay, or destruction of the fences, so as to destroy the evidence of the boundaries of such ancient park; and whether the deer kept in such park had been tamed and reclaimed.

In support of the defendant's case various ancient documents were given in evidence to establish that the place in question was an ancient legal park, and that from a very early period down to the time of the death of the testator there had always been a considerable herd of deer maintained in the park. And it was also proved that the place in question, consisting of upwards of 700 acres of land, was, in many parts, of a very wild and rough description. It also appeared by the evidence that certain lands had been added to the original park; and there was some contrariety of evidence in regard to the state of the fences.

It was also proved that a considerable quantity of deer had the range of the park; and that some were tame, as it was called, and others wild. What in particular the witnesses meant by the distinctions of tame and wild was not explained; but it rather seemed that their meaning was that some were less shy and timid than others. It appeared that the deer very rarely escaped out of the boundaries; that they were attended by keepers, and were fed in the winter with hay, beans, and other food; that a few years back a quantity of deer had been brought from some other place and turned into Eridge Park; that the does were watched, and the fawns, as they dropped, were constantly marked, so that their age at a future time might be ascertained; that, at certain times, a number of deer were selected from the herd, caught with the assistance of dogs, and were put into certain parts of the park, which were then inclosed from the rest, of sufficient extent to depasture and give exercise to the selected deer, which were fattened and killed, either for consumption, or for sale to venison dealers; that the deer were usually killed by being shot; and that there was a regular establishment of slaughterhouses for preparing and dressing them for use.

Such being the general effect of the evidence, the learned judge stated to the jury, that, by the general law, deer in a park went to the heir-at-law of the owner of the park; but that deer which were tame and reclaimed became personal property, and went by law to the personal representatives of the owner of them, and not to the heir of the owner of the park in which they were kept. And the learned judge left it to the jury, whether the place in question was proved by the evidence to have been an ancient park, with the legal rights of a park, and told them that, if it had been an ancient park, and the boundaries could not now be ascertained, that the franchise might be forfeited in reference to the crown, but that that would not affect the question between the parties relative to the deer, that question being whether the deer were tamed and reclaimed; which must be determined with reference to the state and condition of the animals, the nature of the place where they were kept and the mode in which they had been treated: and the learned judge stated in writing the questions to be answered by the jury, which were, first, whether they found for the plaintiffs, the executors, or for the defendant, Lord Abergavenny; secondly, whether they found the place to be an ancient park, with the incidents of a legal park; thirdly, whether the boundaries could be ascertained by distinct marks.

The jury answered, that they found the place to be an ancient park, with all the incidents of a legal park; secondly, that the boundaries of the ancient park could be ascertained. And the jury expressed a wish to abstain from finding for either plaintiffs or defendant; but, upon being required to do so, they found a verdict for the plaintiffs, and stated that the animals had been originally wild, but had been reclaimed.

The rule came on for argument in Easter term, 1848; and it appeared, upon the discussion, that the objection that no sufficient verdict had been found by the jury, had been urged upon a misapprehension of what the jury had said. It was supposed that the jury had not found, in terms, for either plaintiffs or defendant, but merely had answered the questions put to them: but it appeared, upon inquiry, that the jury had been required to find a verdict for the plaintiffs or for the defendant, in addition to answering the questions; and that they accordingly returned a verdict for the plaintiffs.

The second objection was that the judge had misdirected the jury; and it has been contended, in support of that objection, that the judge must be held to have misdirected the jury in having omitted to impress sufficiently upon them the importance of the fact of the deer being kept in an ancient legal park.

But the judge *did* distinctly direct the attention of the jury to the fact of the deer being in a legal park, if such should be their opinion of the place, as an important ingredient in the consideration of the question whether the deer were reclaimed or not when he directed them that the question whether the deer had been reclaimed must be determined by a consideration, among the other matters pointed out, of the nature and dimensions of the park in which they were confined; and we do not perceive any objectionable omission in the judge's direction in this respect, unless the jury ought to have been directed that such fact was conclusive to negative the reclamation of the deer.

It has not been, on the part of the defendant, contended, in terms, that deer kept in a legal park can in no case be deemed to have been tamed or reclaimed, although the argument seemed to bear that aspect; but the many cases to be found in the books in which the question has been agitated, in whom the property was of deer in a park, seem quite inconsistent with such a position; because in all such cases the arguments proceeded upon the distinct fact that the deer were in a park, that is, a legal park; and the question was whether deer continued to be wild animals, in which no property could be acquired, and which, therefore, like other game and wild animals, being upon the land, passed with the estate, or whether, by reason of their being tamed and reclaimed, a property could be acquired in the deer distinct from the estate, although remaining in the park, and which would pass in like manner as other personal property.

The general position, therefore, to be found in all the books, that deer in a park will pass to the heir unless tamed and reclaimed, in which case they would pass to the executor, seems to be inconsistent with the position that deer can not, in any case, be considered as tamed and reclaimed whilst they continue in a legal park. Many authorities are cited upon that subject, the names of which it is not necessary ot advert to.

The observations made in support of the rule, on the part of the defendant, were rather addressed to a complaint that the learned judge did not give so much weight to the fact of this being a legal park as they thought belonged to it, than to any exception to what the judge really said upon the subject. There can be no doubt that the learned counsel on the part of the defendant did not omit to impress upon the jury his view of the importance of the fact of the deer being found in an ancient and legal park; and nothing is stated to have fallen from the judge calculated to withdraw the attention of the jury from the observations of the counsel made in that respect, or to diminish the force which justly attaches to any of them.

It remains to be considered whether the arguments in support of the rule have shown that the verdict upon the issue, whether the deer were tame and reclaimed, was warranted by the evidence. In showing cause, on the part of the plaintiff, against the rule, it was contended that the conclusion of the jury that Eridge Park continued to possess all the incidents of a legal park, was not warranted by the evidence; because it was said that the franchise had been forfeited by the addition of other lands to the ancient park, and the destruction of the means of ascertaining the ancient boundaries; and numerous authorities were referred to, relating to the requisites for constituting an existing legal park, and of the causes of the forfeiture of the franchise. But the opinion which the court has formed upon the other parts of the case, renders it unnecessary to enter into the consideration of that question, or into an examination of the authorities referred to.

That it was proper to leave the question to the jury in the terms in which the issue is expressly joined can not be disputed, and the direction that that question must be determined by referring to the place in which the deer were kept, to the nature and habits of the animals, and to the mode in which they were treated, appears to the court to be a correct direction; and it seems difficult to ascertain by what other means the question should be determined, whether the evidence in this case was such as to warrant a conclusion that the deer were tamed and reclaimed.

The court is, therefore, of opinion that the rule can not be supported on the ground of misdirection.

It is not contended that there was no evidence fit to be submitted to the jury, and that, therefore, the plaintiff ought to have been nonsuited; but it is said that the weight of evidence was against the verdict.

In considering whether the evidence warranted the verdict upon the issue, whether the deer were tamed and reclaimed, the observations made by Lord Chief Justice Willes in the case of Davies *v.* Powell are deserving of attention. The difference in regard to the mode and object of keeping deer in modern times from that which anciently prevailed, as pointed out by Lord Chief Justice Willes, can not be overlooked. It is truly stated that ornament and profit are the sole objects for which deer are now ordinarily kept, whether in ancient legal parks or in modern enclosures so-called; the instances being very rare in which deer in such places are kept and used for sport; indeed, their whole management differing very little, if at all, from that of sheep or of any other animals kept for profit. And, in this case, the evidence before adverted to was that the deer were regularly fed in the winter; the does with young were watched; the fawns taken as soon as dropped, and marked; selections from the herd made from time to time, fattened in places prepared for them, and afterwards sold or consumed, with no difference of circumstance than what attached, as before stated, to animals kept for profit and food.

As to some being wild, and some tame, as it is said, individual animals, no doubt, differed, as individuals in almost every race of animals are found, under any circumstances to differ, in the degree of tameness that belongs to them. Of deer kept in stalls, some would be found tame and gentle, and others quite irreclaimable, in the sense of temper and quietness.

Upon a question whether deer are tamed and reclaimed, each case must depend upon the particular facts of it; and in this case, the court think that the facts were such as were proper to be submitted to the jury; and, as it was a question of fact for the jury, the court can not perceive any sufficient grounds to warrant it in saying that the jury have come to a wrong conclusion upon the evidence, and do not feel authorized to disturb the verdict; and the rule for a new trial must, therefore, be discharged. Rule discharged.

[John Davies *v.* Thomas Powell and six others. Willes's Reports, 1737–1758.]

The following opinion of the court was thus given by Willes, Lord Chief Justice:

Trespass for breaking and entering the close of the plaintiff, called Caversham Park, containing 600 acres of land, in the parish of Caversham, in the county of Oxford, for treading down the grass, and for chasing taking and carrying away *diversas feras, videlicet,* 100 bucks 100 does and 60 fawns of the value of £600 of the said plaintiff, *inclusas et coarctatas* in the said close of the said plaintiff. Damage £700.

The defendants all join in the same plea; and as to the force and arms, etc., they plead not guilty, but as to the residue of the trespass they justify as servants of Charles Lord Cadogan, and set forth that the place where, etc., at the time when, etc., was, and is a park inclosed and fenced with pales and rails, called and known by the name of Caversham Park, etc.; and that the said Lord Cadogan was seized thereof and also of a messuage, etc., in his demesne as of fee, and being so seized on the 3d of August, 1730, by indenture demised the same to the plaintiff by the name (*inter alia*) of all the said park called Caversham Park from Lady-day then last past for the term of 7 years, under the rent of £124 2*s*. The deer are not particularly demised, but there is a covenant that the plaintiff, his executors, and administrators should from time to time during the term keep the full number of 100 living deer in and upon the said demised premises, or in or upon some parts thereof. And Lord Cadogan covenants to allow the plaintiff in the winter yearly during the term twenty loads of boughs and lops of trees for browse for *his deer* to feed on, calling them there, as he does in other parts of the lease, the deer of the said John Davies; and likewise covenants that if the plaintiff shall on the feast of St. Michael next before the expiration thereof pay Lord Cadogan all the rent that would be due at the expiration of the lease, then the plaintiff, his executors, etc., might sell or dispose of any or all of the deer that he or they should have in the said park at any time in the last year of the said term, anything in the said indenture to the contrary in anywise notwithstanding. And the defendants justify taking the said deer as a distress for £186 rent due at St. Thomas-day, 1731, and say that they did seize, chase, and drive away the said deer in the declaration mentioned then and there found, "being the property of and belonging to the said John Davies," in the name of a distress for the said rent; and then set forth that they complied with the several requisites directed by the act concerning distresses (and to which there is no objection taken) that the deer were appraised at £161 15*s.* 6*d.*, and that they were afterwards sold for £86 19*s.*, being the best price they could get for the same; and that the said sum was paid to Lord Cadogan towards satisfaction of the rent in arrear; and that in taking such distress they did as little damage as they could.

To this plea the plaintiff demurs generally, and the defendants join in demurrer.

And the single question that was submitted to the judgment of the court is whether these deer under these circumstances, as they are set forth in the pleadings, were distrainable or not. It was insisted for the plaintiff that they were not;

(1) Because they were *feræ naturæ*, and no one can have absolute property in them.

(2) Because they are not chattels, but are to be considered as hereditaments and incident to the park.

(3) Because, if not hereditaments, they were at least part of the thing demised.

(4) Their last argument was drawn *ab inusitato*, because there is no instance in which deer have been adjudged to be distrainable.

First. To support the first objection, and which was principally relied on by the counsel for the plaintiff, they cited Finch 176; Bro. Abr., tit. "Property," pl 20; Keilway, 30 b; Co. Lit. 47 a; 1 Rol. Abr. 666; and several other old books, wherein it is laid down as a rule that deer are not distrainable; and the case of Mallocke *v.* Eastley, 3 Lev. 227, where it was holden that trespass will not lie for deer, unless it appears that they are tame and reclaimed. They likewise cited 3 Inst. 109, 110, and 1 Hawk. P. C. 94 to prove that it is not felony to take away deer, conies, etc., unless tame and reclaimed.

I do admit that it is generally laid down as a rule in the old books that deer, conies, etc., are *feræ naturæ*, and that they are not distrainable; and a man can only have a property in them *ratione loci.* And therefore in the case of swans, (7 Co. 15, 16, 17, 18) and in several other books there cited it is laid down as a rule that where a man brings an action for chasing and taking away deer, hares, rabbits, etc., he shall not say *suos*, because he has them only for his game and pleasure *ratione privilegii* whilst they are in his park, warren, etc. But there are writs in the register (fol. 102), a book of the greatest authority, and several other places in that book which show that this rule is not always adhered to. The writ in folio 102 is "*quare clausum ipsius A. freget et intravit, & cuniculos suos cepit.*"

The reason given for this opinion in the books why they are not distrainable is that a man can have no valuable property in them. But the rule is plainly too general, for the rule in Co. Lit. is extended to dogs, yet it is clear now that a man may have a valuable property in a dog. Trover has been several times brought for a dog, and great damages have been recovered. Besides the nature of things is now very much altered, and the reason which is given for the rule fails. Deer were formerly kept only in forests or chases, or such parks as were parks either by grant or prescription, and were considered rather as things of pleasure than of profit; but now they are frequently kept in inclosed grounds which are not properly parks, and are kept principally for the sake of profit, and therefore must be considered as other cattle.

And that this is the case of the deer which are distrained in the present case is admitted in the pleadings. The plaintiff by bringing an action of trespass for them in some measure admits himself to have a property in them; and they are laid to be *inclusas et coarctatas* in his close, which at least gave him a property *ratione loci*; and they are laid to be taken and distrained there; but what follows makes it still stronger, for in the demise set forth in the plea, and on which the question depends, they are several times called *the deer of* John Davies, *the plaintiff*, and he is at liberty to dispose of them as his own before the expiration of the term on the condition there mentioned. And it is expressly said that the defendants distrained the deer being the property of the said John Davies; it is also plain that he had a valuable property in them, they having been sold for £86 19*s*., both which facts are admitted by the demurrer. The plaintiff therefore in this case is estopped to say either that he had no property in them or that his property was of no value. Besides it is expressly said in Bro. Abr., tit. "Property," pl. 44, and agreed in all the books, that if deer or any other things *feræ naturæ* become tame a man may have a property in them. And if a man steal such deer it is certainly felony, as is admitted in 3 Inst., 110, and Hawk P. C., in the place before cited.

Upon a supposition, therefore, which I do not admit to be law now, that a man can have no property in any but tame deer, these must be taken to be tame deer, because it is admitted that the plaintiff had a property in them.

Second. As to their not being chattels but hereditaments and incident to the park and so not distrainable, several cases were cited: Co. Lit, 47 b. and 7 Co. 17 b.; where it is said that if the owner of a park die the deer shall go to his heir and not to his executors; and the statute of Marlbridge (52 Hen. III, c. 22), where it is said that no one shall distrain his tenants *de libero tenemento suo nec de aliquibus ad liberum tenementum spectantibus.* I do admit the rule that hereditaments or things annexed to the freehold are not distrainable; and possibly in the case of a park, properly so called, which must be either by grant or prescription, the deer may in some measure be said to be incident to the park; but it does not appear that this is such a park, nay it must be taken not to be so. In the declaration it is stiled *the close of the plaintiff*, called Caversham Park. In the plea indeed it is stiled a *park*, called Caversham Park; but it is not said that it is a park either by grant or prescription; and it can not be taken to be so on these pleadings, but must be taken to be a close where deer have been kept, and which therefore has obtained *the name of a park*, because the deer, as I mentioned before, are called *the deer of John Davies*, and because he is at liberty to sell them, and so to sever them from the park before the expiration of the term. And in Hale's History of the Pleas of the Crown (1 vol. fol. 491), cited for the defendants, it is expressly said that there may be *a park in reputation*, "as if a man inclose a piece of ground and put deer in it, but that makes it not a park, without a prescription time out of mind or the King's charter." (Vid. stat., 21 Ed. I, *de malefactoribus in parcis* there referred to).

Third. As to the third objection that the deer are part of the thing demised, and consequently not distrainable, the only case which was cited to prove this was the case of tithes, which is nothing to the purpose; because where tithes only are let a man can not reserve a rent, it being only a personal contract. Without denying the rule, which I believe is generally true, the fact here will not warrant it, for they are not part of the thing demised. They are not mentioned in the description of the particulars, and can not be part of the thing demised for the reason before given, because they may be sold and disposed of by the plaintiff before the expiration of the demise.

Fourth. The last argument, drawn *ab inusitato*, though generally a very good one, does not hold in the present case. When the nature of things changes, the rules of law must change too. When it was holden that deer were not distrainable, it was because they were kept principally for pleasure and not for profit, and were not sold and turned into money as they are now. But now they are become as much a sort of husbandry as horses, cows, sheep, or any other cattle. Whenever they are so and it is universally known, it would be ridiculous to say that when they are kept merely for profit they are not distrainable as other cattle, though it has been holden that they were not so when they were kept only for pleasure. The rules concerning personal estates, which were laid down when personal estates were but small in proportion to lands, are quite varied both in courts of law and equity, now that personal estates are so much increased and become so considerable a part of the property of this kingdom.

Therefore, without contradicting the reasons which are laid down concerning this matter in the ancient books, and without determining anything with respect to deer in forests and chases or parks properly so called, concerning which we do not think it necessary to determine anything at present, we are all of opinion that we are well warranted by the pleadings to determine that these deer, under the circumstances in which they appear to have been kept at the time when this distress was taken, were properly and legally distrained for the rent that was in arrear.

There must therefore be judgment for the defendants.

## II.—The Right of the United States to Protect their Sealing Interests and Industry.

The principal question which the United States Government conceives to be presented for the decision of this High Tribunal, is thus stated in the Case of the United States (p. 299):

> Whether individuals, not subjects of the United States, have a right as against that Government and to which it must submit, to engage in the devastation complained of, which it forbids to its own citizens, and which must result in the speedy destruction of the entire property, industry, and interests involved in the preservation of the seal herd.

In reply on its part to this question, three propositions of law are set forth by the United States Government in its Case (p. 300):

First. That in view of the facts and circumstances established by the evidence, it has such a property in the Alaskan seal herd, as the natural product of its soil, made chiefly available by its protection and expenditure, highly valuable to its people, and a considerable source of public revenue, as entitles it to preserve the herd from destruction in the manner complained of, by an employment of such reasonable force as may be necessary.

Second. That, irrespective of the distinct right of property in the seal herd, the United States Government has for itself and for its people, an interest, an industry, and a commerce derived from the legitimate and proper use of the produce of the seal herd on its territory which it is entitled, upon all principles applicable to the case, to protect against wanton destruction by individuals, for the sake of the small and casual profits in that way to be gained; and that no part of the high sea is or ought to be open to individuals, for the purpose of accomplishing the destruction of national interests of such a character and importance.

Third. That the United States, possessing as they alone possess, the power of preserving and cherishing this valuable interest, are in a most just sense the trustee thereof for the benefit of mankind, and should be permitted to discharge their trust without hindrance.

In the division of the argument that has been made between counsel for convenience' sake, the first and third of these propositions, which are naturally connected, have been exhaustively discussed by Mr. Carter.

Before proceeding to that consideration of the second proposition which is the principal purpose of this argument, the undersigned desires to add in respect to the first, some brief suggestions, which are perhaps only a restatement in a different form, of what has been already advanced.

Whatever else is in dispute, certain facts in relation to the seal herd, its qualities, and its necessities, are not denied.

The seal is an amphibious animal, polygamous, altogether *sui generis*, and very peculiar in its habits. A fixed home upon land during several months in the year is necessary to its reproduction, and to the perpetuation of its species. It has established this home, from the earliest known period of its existence, on the Pribilof Islands, to which it returns annually with an unfailing *animus revertendi* and an irresistible instinct, and where it remains during several months, and until the young which are born there have acquired sufficient growth and strength to depart on their periodic and regular migration.

While on land it submits readily to the control of man, and indeed commits itself to his protection. And it is testified by credible witnesses that every seal in the herd, were it desired, could be branded with the mark of the United States.

The Government has fostered and protected the seals, as did the Russian Government, its predecessor in the ownership of these islands, by careful legislation and by constant and salutary executive control, and has established out of the seal products an important and valuable industry. Without this protection the animal would long since have been exterminated, as it has been almost everywhere else.

When the female seals arrive on the islands, they are pregnant with the young which were begotten there during the previous season. After the young are born, the mothers, while suckling them, are accustomed almost daily, and from necessity, to run out to sea beyond the limits of the territorial waters in pursuit of food, leaving the young on the islands during their absence.

Upon these facts alone, it is insisted by the United States Government, that it has such a property in the seal herd, the produce of its territory and appurtenant thereto, as entitles that Government to protect it from extermination or other unauthorized and injurious interference.

The complete right of property in the Government while the animals are upon the shore or within the cannon-shot range which marks the limit of territorial waters can not be denied. The only question is whether it has such a right outside of that line, while the seals are on their way to the islands in the regular progress of their migration at the season of reproduction, or when, while remaining on the islands, the females are passing to and fro in the open sea in quest of the food necessary to sustain the young left there, and which would perish if their mothers were destroyed. The clear statement of this question and of the facts upon which it depends, would seem to render its answer obvious.

(1) Even upon the ordinary principles of municipal law as administered in courts of justice, such a property would exist under the circumstances stated. It is a general rule, long settled in the common law of England and America, that where useful animals, naturally, wild have become by their own act, or by the act of those who have subjected them to control, established in a home upon the land of such persons, to which the animals have an *animum revertendi* or fixed habit of return, and do therefore regularly return, where they are nurtured, protected, and made valuable by industry and expenditure, a title arises in the proprietors of the land, which enables them to prevent the destruction of the animals while temporarily absent from the territory where they belong; a title, however, which would be lost should they abandon permanently their habit of return, and regain their former wild state.

It is under this rule, the justice of which is apparent, that property is admitted in bees, in swans and wild geese, in pigeons, in deer, and in many other animals originally *feræ naturæ*, but yet capable of being partially subjected to the control of man, as is fully shown by the numerous authorities cited in and appended to Mr. Carter's argument; and that point need not be further elaborated.[1] The case of the seals is much stronger, in consequence of their peculiar nature and habits of life. Their home on American soil is not only of their own selection, but is a permanent home, necessary to their existence, and in respect to which they never lose the *animum revertendi*. Upon the evidence in this case it is gravely to be doubted, whether if the United States Government should now repel them from the Pribilof Islands, and prevent henceforth their landing there as they are accustomed to do, there is any other land in those seas, affording the requisite qualities of soil, climate, atmosphere, approach, propinquity to the water, food, and freedom from disturbance, on which they would be able to reëstablish themselves, so as to continue their existence.

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[1] See also the cases of Hannam *v.* Mockett, 2 Barnewall *v.* Cresswell's Rep., p. 943; Keeble *v.* Hicheringill, Holt's Rep., p. 17, and Carrington *v.* Taylor, 1 East's Rep., p. 571, and Reporter's note, from which extracts are given in appendix to this portion o the argument, p. 180.

Especially does the rule of law above stated apply to animals, which in their temporary departure from their accustomed home, enter upon no other jurisdiction, and derive neither sustenance nor protection from any other proprietor, but only pass through the waters of the common highway of nations, where all rights are relative.

(2) But upon the broader principles of international law applicable to the case, the right of property in these seals in the United States Government becomes still clearer. Where animals of any sort, wild in their original nature, are attached and become appurtenant to a maritime territory, are not inexhaustible in their product, are made the basis of an important industry on such territory, and would be exterminated if thrown open to the general and unrestricted pursuit of mankind, they become the just property of the nation to which they are so attached, and from which they derive the protection without which they would cease to exist, even though in the habits or necessities of their life some of them pass from time to time into the adjacent sea, beyond those limits which by common consent and for the purposes of defense, are regarded as constituting a part of the national territory. In such a case as this, the herd and the industry arising out of it become indivisible; and constitute but one proprietorship.

While the United States Government asserts and stands upon the full claim of property in the seals which we have attempted to establish, it is still to be borne in mind that a more qualified right would yet be sufficient for the actual requirements of the present case. The question here is not what is the right of ownership in an individual seal, should it wander in some other period into some other and far distant sea; that is an inquiry not essential to be gone into; but what is the right of property in the herd as a whole, in the seas, and under the circumstances, in which it is thus availed of by the United States Government as the foundation of an important national concern, and in which it is assailed by the Canadians in the manner complained of? When this point is determined, all the dispute that has arisen in this case is disposed of.

The principle of law last stated is not only asserted, without contradiction, by the authoritative writers upon international jurisprudence, but has been acted upon, with the assent of all nations, in every case that has arisen in civilized times, within the conditions above stated. And upon that tenure is held and controlled to-day, by nations whose borders are upon the sea, all similar property, of many descriptions, that under like circumstances is known to exist.

Says Puffendorf (Law of Nature and Nations, book 4, chap. 5, sec. 7):

> As for fishing, though it hath much more abundant subject in the sea than in lakes or rivers, yet 'tis manifest that it may in part be exhausted, and that if all nations should desire such right and liberty near the coast of any particular country, that country must be very much prejudiced in this respect; especially since 'tis very usual that some particular kind of fish, or perhaps some more precious commodity, as pearls, coral, amber, or the like, are to be found only in one part of the sea, and that of no considerable extent. In this case there is no reason why the borderers should not rather challenge to themselves this happiness of a wealthy shore or sea than those who are seated at a distance from it.

Says Vattel (Book I, chap. 23, sec. 287, p. 126):

> The various uses of the sea near the coasts render it very susceptible of property. It furnishes fish, shells, pearls, amber, etc.; now in all these respects its use is not inexhaustible. Wherefore, the nation to whom the coasts belong may appropriate to themselves, and convert to their own profit, an advantage which nature has so placed within their reach as to enable them conveniently to take possession of it, in the same manner as they possess themselves of the dominion of the land they inhabit. Who can doubt that the pearl fisheries of Bahrem and Ceylon may lawfully become property? And though, where the catching of fish is the only object, the fishery appears less liable to be exhausted, yet if a nation have on their coasts a particular fishery of a profitable nature, and of which they may become masters, shall they not be permitted to appropriate to themselves that bounteous gift of nature as an appendage to the country they possess, and to reserve to themselves the great advantages which their commerce may thence derive, in case there be a sufficient abundance of fish to furnish the neighbouring nations? * * * (*Sec.* 288.) A nation may appropriate to herself those things of which the free and common use would be prejudicial or dangerous to her. This is a second reason for which governments extend their dominion over the sea along their coasts, as far as they are able to protect their right.

Another suggestion is pertinent to the question.

The whole herd owes its existence, not merely to the care and protection, but to the forbearance of the United States Government within its exclusive jurisdiction. While the seals are upon United States territory during the season of reproduction and nurture, that Government might easily destroy the herd by killing them all, at a considerable immediate profit. From such a slaughter it is not bound to refrain, if the only object is to preserve the animals long enough to enable them to be exterminated by foreigners at sea. If that is to be the result, it would be for the interest of the Government and plainly within its right and powers, to avail itself at once of such present value as its property possesses, if the future product of it can not be preserved. Can there be more conclusive proof than this of such lawful possession and control as constitutes property, and alone produces and continues the existence of the subject of it?

The justice and propriety of these propositions, their necessity to the general interests of mankind, and the foundation upon which they rest in the original principles from which rights of ownership are derived, have been clearly and forcibly pointed out by Mr. Carter.

In a later part of his argument (pp. 164–169) many instances, past and present, in respect to many descriptions of marine and submarine property, from many nations, and from Great Britain and its colonies especially, are gathered together to show what the usage of mankind on this subject has been and is. It is that general usage which constitutes the law of this case. And on this point, if it can be shown that any different usage has ever prevailed in the case of any nation able to assert its independence, touching any similar property on which it set value, let such evidence be produced by those who are able to find it, and whose claims it will subserve. If in this instance the United States Government has no right of property which it is entitled to protect, the case would present the singular anomaly of being the only one in which that right has not been maintained, in respect to any valuable marine product similarly situated, or appurtenant in like manner to the territory of a maritime country.

It is against this view of the case, too obvious to escape the attention of the distinguished counsel for Her Majesty's Government, that they have chiefly struggled throughout the British Counter Case, for which they have thought it right to reserve their contentions, both in propositions and evidence, in respect to the principal questions involved. But they have struggled in vain. The broad facts upon which it rests are either admitted or are incontestable. No mere attempt to disparage or diminish them, no cavil over details, no conjectural suggestions unsustained by proof, can break their force or change their effect. And the legal conclusions to which they conduct, can not be regarded at this day as open to serious question.

The case of the United States has thus far proceeded upon the ground of a national property in the seal herd itself. Let it now be assumed, for the purposes of the argument, that no such right of property is to be admitted, and that the seals are to be regarded, outside of territorial waters, as *feræ naturæ* in the full sense of that term. Let them be likened, if that be possible, to the fish whose birthplace and home are in the open sea, and which only approach the shores for the purpose of food at certain seasons, in such numbers as to render the fishing there productive.

The question then remains, whether upon that hypothesis, the industry established and maintained by the United States Government on the Pribilof Islands, in the taking of the seals and the commerce that is based upon it, are open to be destroyed at the pleasure of citizens of Canada, by a method of pursuit outside the ordinary line of territorial jurisdiction, which must result in the extermination of the animals. Is there, even in that view of the case, any principle of international law which deprives the United States Government of the right to defend itself against this destruction of its unquestioned interests, planted and established on its own territory? In other words, is the right of individual citizens of another country to the temporary profit to be derived out of such extermination, superior on the high sea to that of the United States Government to protect itself against the consequences.

This, if the strict right of property can be successfully denied, is the precise question addressed to the consideration of the Tribunal. Abstract speculations can only be useful, so far as they tend to conduct to a just determination of it.

Before proceeding to a discussion of this question, the material facts and conditions upon which it arises should be clearly perceived and understood. For it is upon these and not upon theoretical considerations that the argument reposes.

(1) It is to be observed in the first place, that the interest in the business which it is sought to protect, is an important interest and resource of the Government itself.

The seal industry on these islands was one of the principal inducements to the purchase of Alaska by the United States from the Russian Government, for a large sum of money. The care and pursuit of the seals were immediately made the subject of legislation by Congress, under which the whole business has been since regulated, protected, and carried on by the Government, as it had been before by Russia, in such manner as to preserve the existence and to increase the numbers of the seal herd, and to make its product valuable to those engaged in it, and a source of a considerable public revenue to the Government. (See U. S. Revised Statutes, secs. 1956–1975.)

It pays to the Government, as the evidence shows, a direct revenue of about $10 per skin, and a considerable indirect revenue upon the importation of the dressed furs; and to the company, which under lease from the Government and subject to its regulations carries on the business, it affords a large annual return, which enables them to make their payments to the Government. To the inhabitants of the islands and many others directly employed or indirectly concerned, it gives the means of subsistence.

Nor are the United States alone the recipients of the profits, or interested to preserve this industry. The principal manufacture of merchantable furs from the raw skins is carried on in London, where large houses are engaged in it, employing as the proof shows, between 2,000 and 3,000 persons. London is also the headquarters of the trade in the product, and of the commerce through which it is distributed. It is probable that the interest of Great Britain in the preservation of the seal herd is almost as great as that of the United States.

The civilized world outside of these two countries is likewise concerned in preserving from extinction the valuable product of these islands. It enters largely into human use; there is no substitute for it, especially in view of the great decrease of fur-bearing animals; and nowhere else on the globe is the seal fur produced in any considerable quantities. Almost everywhere this valuable animal has been exterminated, by the same reckless and wasteful pursuit that is complained of here.

It is pertinent to remember, in this connection, that if the nation that is contending for the preservation of this product of its territory was but small and poor, and this resource for revenue and subsistence instead of being one out of many, were the only one it possessed, so that its very existence depended upon the maintenance of it, the principles of international law applicable to the subject would be precisely the same as they are now. The case would be relatively of greater importance to one of the parties; the law that would control it would be the law that controls this case; for a nation has the same right to defend one material interest, or one class of citizens, that it has to defend all it possesses, and all the conditions of its existence.

(2) The pursuit of the seals in the open sea, at the times and in the manner complained of, leads to the early extermination of the whole herd.

It is not necessary to the argument that this extreme result should be made out. It would be enough to show that the interest in question is seriously embarrassed and prejudiced, or its product materially reduced, even though it were not altogether destroyed. But the evidence in the case, of which a large amount has been submitted, completely establishes the fact that the herd has by these means been already largely diminished, and that it must necessarily, if the same conduct is continued, be at no distant day entirely annihilated.

(3) The method of pursuit employed by the Canadian vessels, and against which the United States Government protests, not only tends to the rapid extermination of the seal, but is in itself barbarous, inhuman, and wasteful.

A very large proportion of the seals taken are females, either pregnant and about to give birth to their young, or engaged in suckling their offspring, which, by the killing of the mothers, are left to perish in great numbers by starvation. Some are in both these conditions at the same time. And of those thus destroyed in the water, a considerable share certainly, and probably a very large share, are lost to the hunter.

The killing of female seals at any time is made criminal by the statutes of the United States. (U. S. Revised Statutes, sec. 1961.)

The destruction during the breeding season of wild animals of any kind which are in any respect useful to man, is prohibited, not only by all the instincts of humanity, but by the laws of every civilized country, and especially by the laws of the United States and of Great Britain. That protection, as will be more fully pointed out hereafter, has long been and now is extended to the seals in every country in the world where they are to be found. In no part of the world that is within territorial jurisdiction could such conduct take place, without exposing the perpetrator to criminal prosecution (see Case of the United States, pp. 220–229). So that in order to justify it in this case, the sea must be held to be free for acts which are not only destructive of the valuable interests of an adjacent nation, but are forbidden everywhere se by universal law.

(4) The depredations in question, dignified in the Report of the British Commissioners by the name of an "industry," are the work of individuals who fit out vessels for this purpose. Their number, though increasing, is not great. The business is speculative, and as a whole not remunerative, though it has instances of large gains which stimulate the enterprise of those concerned, and make the prospect attractive, like all occupations which have a touch of adventure, an element of gambling, and a taste of cruelty.

It is this casual and uncertain profit, of these comparatively few individuals, which must of course terminate when the seal herd is destroyed or even much reduced, that is to be balanced against the loss that will be sustained by the United States, if that destruction is completed.

(5) Against this injury, which the United States Government has made the subject of vain remonstrance, there are absolutely no means of defense that can be made available within the limits of territorial jurisdiction. The destruction is wrought outside those limits, and must be repressed there or it can not be repressed at all.

As it is impossible, when seals are hunted in the water, that the sex can ever be discriminated before the killing takes place, it follows that if what is called "pelagic sealing" is allowed to be carried on, the enormous proportion of pregnant and suckling females and of nursing young before referred to, must continue to be destroyed.

That method of pursuit conduces also unavoidably to injurious raids by those concerned in it, upon the seals on the islands. The extent of the shores and the peculiarity of the climate and atmosphere, as described in the evidence, make it extremely difficult and at times impossible to maintain such vigilance as will prevent these incursions, if seal-hunting in the neighboring waters is permitted. The result of these raids is suggested in the British Counter Case as one of the means by which the gradual extermination of the seals, too obvious to be denied, is taking place. How much the suggestion is worth, will be seen when the whole evidence is reviewed. But the counsel seem to forget, in making it, that it is only the toleration of foreign sealing vessels in waters near the islands, that renders such raids possible.

The inevitable conclusion from these facts is, that there is an absolute necessity for the repression of killing seals in the water in the seas near the Pribilof Islands, if the herd is to be preserved from extinction. No middle course is practicable consistently with its preservation.

The evidence adduced on the part of the United States in support of the foregoing propositions of fact, and that relied upon to the contrary, so far as we have had an opportunity to see it, is fully discussed in a later branch of the argument (*infra*, pp. 228-313).

The ground upon which the destruction of the seal is sought to be justified, is that the open sea is free; and that since this slaughter takes place there, it is done in the exercise of an indefeasible right in the individuals engaged in it; that the nation injured can not defend itself on the sea, and therefore upon the circumstances of this case can not defend itself at all, let the consequences be what they may.

The United States Government denies this proposition. While conceding and interested to maintain the general rule of the freedom of the sea, as established by modern usage and *consensus* of opinion, it asserts that the sea is free only for innocent and inoffensive use, not injurious to the just interests of any nation which borders upon it; that to the invasion of such interests, for the purposes of private gain, it is not free; that the right of self-defense on the part of a nation is a perfect and paramount right, to which all others are subordinate, and which upon no admitted theory of international law has ever been surrendered; that it extends to all the material interests of a nation important to be defended; that in the time, the place, the manner, and the extent of its execution, it is limited only by the actual necessity of the particular case; that it may, therefore, be exercised upon the high sea, as well as upon the land, and even upon the territory of other and friendly nations, provided only that the necessity for it plainly appears; and that wherever an important and just national interest of any description is put in peril for the sake of individual profit by an act upon the high sea, even though such act would be otherwise justifiable, the right of the individual must give way, and the nation will be entitled to protect itself against the injury, by whatever force may be reasonably necessary, according to the usages established in analagous cases.

It is believed that these general principles will be found to underlie the whole theory and system of the law of the sea, so far as it has been formulated by the consent and usage of mankind; that they are the foundation of many maritime rights, long recognized and established; that they have received the sanction of courts of justice whenever they have been brought under judicial consideration, and of all writers upon the subject whose views are entitled to weight: that they are supported by many historic precedents, the rightfulness of which has never been called in question; and that no precedent or authority can be produced, judicial, juridical, or historical, for such a right in the open sea as is claimed by the Canadians in the present case.

That the sea was at an early day regarded as subject to no law is probably true. It was the theatre of lawless violence and the home of piracy. But this condition was soon found intolerable. The assumption of a dominion over it by adjacent maritime nations became a necessity to self-protection, and was therefore generally assented to. The *mare liberum* in all such waters gave way to *mare clausum*, not upon principle, but for the sake of defense. Says Sir Henry Maine (Lectures upon International Law, pp. 75–77):

> The first branch of our inquiry brings us to what, at the birth of international law, was one of the most bitterly disputed of all questions, the question of *mare clausum* and *mare liberum*—sea under the dominion of a particular power, or sea open to all—names identified with the great reputations of Grotius and Selden. In all probability the question would not have arisen but for the dictum of the institutional Roman writers that the sea was by nature common property. And the moot point was whether there was anything in nature, whatever that word might have meant, which either pointed to the community of sea or of rivers; and also what did history show to have been the actual practice of mankind, and whether it pointed in any definite way to a general sense of mankind on the subject. We do not know exactly what was in the mind of a Roman lawyer when he spoke of nature. Nor is it easy for us to form even a speculative opinion as to what can have been the actual condition of the sea in those primitive ages, somehow associated with the conception of nature. The slender evidence before us seems to suggest that the sea at first was common, only in the sense of being universally open to depredation. * * *
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> Whatever jurisdiction may have been asserted, probably did not spring from anything which may be called nature, but was perhaps a security against piracy. At all events, this is certain, that the earliest development of maritime law seems to have consisted in a movement from *mare liberum*, whatever that may have meant, to *mare clausum*—from navigation in waters over which nobody claimed authority, to waters under the control of a separate sovereign. The closing of seas meant delivery from violent depredation at the cost or by the exertion of some power or powers stronger than the rest. No doubt sovereignty over water began as a benefit to all navigators, and it ended in taking the form of protection.[1]

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[1] Sir Henry Maine proceeds as follows: "Mr. W. E. Hall, in a very interesting chapter of his volume (Part II, 2) has shown that international law in the modern sense of the words, 'began in a general system of *mare clausum*. The Adriatic, the Gulf of Genoa, the North Sea, and the Baltic were all closed and were under authority, and England claimed to have precedence and to exercise jurisdiction of various kinds from the North Sea and the parts of the Atlantic adjoining Scotland and Ireland, southwards to the Bay of Biscay. In all these waters the omission to lower the flag to a British ship would have been followed by a cannon shot. Thenceforward the progress

When commerce became more extensive and better able to protect itself, the modern conception of the freedom of the sea, first formally set forth by Grotius, came gradually to be established. But the contrary doctrine was contended for by the great judicial authorities in England. The views of Sir Matthew Hale and of Selden are well known. The powerful argument of the latter is a permanent monument of the contention of his time in England. The opinion of Blackstone was to the same effect. As late as 1824 another eminent English writer, Mr. Chitty, in his Commercial Law, maintained the right of dominion by maritime nations over neighboring seas, founded upon the necessities of their situation. The surrender by England and other maritime powers of their control over the seas, so long maintained, in deference to the growing sentiment of the world and the demands of free commerce, was slowly and reluctantly given. But that surrender was, as universally understood, for the purposes of just, innocent, and mutually profitable use by the nations whose borders touched the sea. It was not thrown open again to general lawlessness. The whole argument in favor of the freedom of the sea was based upon the ground that its free use by mankind was inoffensive and harmless and conducive to the general good; and, therefore, ought not to be arbitrarily restricted.[1]

Says Mr. Justice Story:

> Every ship sails there [in the open sea] with the unquestionable right of pursuing her own lawful business without interruption, but whatever may be that business, she is bound to pursue it in such a manner as not to violate the rights of others. The general maxim in such cases is *sic utere tuo ut alienum non lædas.* (The Marianna Flora, 11 Wheaton's Repts., U. S. Sup. Court, p. 41.)

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of maritime jurisdiction was reversed—from *mare clausum* to *mare liberum;* and the sovereignty allowed by international law over a portion of the sea is in fact a decayed and contracted remnant of the authority once allowed to particular states over a great part of the known sea and ocean" (p. 77).

[1] Grotius (Book II, chap. III, sec. 12, p. 445) remarks: "It is certain that he who would take possession of the sea by occupation could not prevent a *peaceful and innocent navigation,* since such a transit can not be interdicted even on land, though ordinarily it would be less necessary and more dangerous."

And Mr. Twiss (Int. Law, secs. 172, 185) says: "But this is not the case with the open sea, upon which all persons may navigate without the least prejudice to any nation whatever, and without exposing any nation thereby to danger. It would *thus seem* that there is no natural warrant for any nation to seek to take possession of the open sea, or even to restrict the innocent use of it by other nations. * * * The right of fishing in the open sea or main ocean is common to all nations on the same principle which sanctions a common right of navigation, viz, *that he who fishes in the open sea does no injury to any one, and the products of the sea are, in this respect, inexhaustible and sufficient for all.*"

Says Chancellor Kent (1 *Commentaries*, 27):

> Every vessel in time of peace has a right to consult its own safety and convenience, and to pursue its own course and business without being disturbed, *when it does not violate the rights of others.*
>
> The freedom of the high seas for the *inoffensive* navigation of all nations is firmly established. (Amphlett, J., Queen *v.* Kehn, 2 Law Rep. Exch. Div., p. 119.)

Nor was the right of self-defense on the sea ever yielded up or relinquished by any nation. On the contrary, in every successive instance in the progress of civilization and the advance of commerce, in which restrictions upon the freedom of the sea were found necessary to the protection of any material interest or right, general or special, such restrictions were at once asserted, were recognized by general assent, and became incorporated into the growth of that system of rules and usages known as international law. Some of them will be more particularly adverted to hereafter. The safety of states and the protection of their commercial interests were not sacrificed to the idea of the freedom of the sea. That freedom was conceded for the purposes of such protection, and as affording its best security.

There are no arbitrary restrictions imposed in modern times upon the freedom of the sea. Neither are there any arbitrary rights there. There, as elsewhere, liberty has two conditions; submission to just principles of law, and due regard for the rights of others. And these conditions are enforced by the injured party, because they can be enforced in no other way.[1]

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[1] "Since, then, a nation is obliged to preserve itself, it has a right to everything necessary for its preservation, for the law of nature gives us a right to everything without which we can not fulfill our obligations.

"A nation or state has a right to everything that can help to ward off imminent danger and to keep at a distance whatever is capable of causing its ruin, and that from the very same reasons that establish its right to things necessary to its preservation." (Vattel, secs. 18, 19.)

"The right of self-defense is, accordingly, a primary right of nations, and it may be exercised, either by way of resistance to an immediate assault or by way of precaution against threatened aggression. The indefeasible right of every nation to provide for its own defense is classed by Vattel among its perfect rights." (Twiss, Int. Law, part I, sec. 12.)

"The right of self-preservation is the first law of nations, as it is of individuals." * * * "For international law considers the right of self-preservation as prior and paramount to that of territorial inviolability." (Phillimore, Int. Law, chap. 10, secs. 111, 114.)

"In the last resort almost the whole of the duties of states are subordinated to the right of self-protection. Where law affords inadequate protection to the individual, he must be permitted, if his existence is in question, to protect himself by whatever means may be necessary. * * * There are, however, circumstances falling short of occasions upon which existence is immediately in question, in which, The right of self-defense by a nation upon the sea, and the right of municipal jurisdiction over a limited part of the sea adjacent to the coast, are not to be confounded, for the two are totally distinct. The littoral jurisdiction, indeed, is only a branch of the general right of self-defense, accorded by usage and common consent: first, because it is always necessary for self-protection, and next, because it is usually sufficient for it. Upon no other ground was it ever attempted to be sustained. That jurisdiction must be limited by an ascertained or ascertainable line, is its necessary condition. That the right of self-defense is subject to no territorial line, is equally plain. All rights of self-defense are the result of necessity. They are co-extensive with the necessity that gives rise to them, and can be restricted by no other boundary. As remarked by Chief Justice Marshall, "All that is necessary to this object is lawful, all that transcends it is unlawful."

Precisely what is the limit of jurisdiction upon the littoral sea, and precisely what are the nature and extent of the jurisdiction that can be asserted within it, whether it is absolute or qualified, territorial or extra-territorial, are questions that have been the subject of grave difference of opinion among jurists. Nor have they ever been entirely settled. They will be found to be discussed with a fullness of learning, a depth of research, and a masterly power of reasoning, to which nothing can be added, in the opinions of the English judges in the important and leading case of The Queen *v.* Kehn (2 Law Rep. Exch. Div., 1876–'77, pp. 63 to 239). These learned and eminent judges were not fortunate enough to agree upon all the questions involved, and every view that can be taken of them, and every consideration that is pertinent, are exhaustively presented in their opinions.

Upon these vexed questions it is not at all necessary to enter in the present case, for they have little to do with it. Whether the conclu-

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through a sort of extension of the idea of self-preservation to include self-protection against serious hurts, states are allowed to disregard certain of the ordinary rules of law, in the same manner as if their existence were involved." (Hall, Int. Law, chap. 7, sec. 83.)

"If a nation is obliged to preserve itself, it is no less obliged carefully to preserve all its members. The nation owes this to itself, since the loss even of one of its members weakens it and is injurious to its preservation. It owes this also to the members in particular, in consequence of the very act of association; for those who compose a nation are united for their defense and common advantage, and none can justly be deprived of this union and of the advantages he expects to derive from it, while he, on his side, fulfills the conditions. The body of a nation can not, then, abandon a province, a town, or even a single individual who is a part of it, unless compelled to it by necessity, or indispensably obliged to it by the strongest reasons founded on the public safety." (Vattel, sec. 17.)

sions of one or the other of these conflicting opinions are to be accepted, is immaterial here. All authorities agree that the sole reason upon which a certain right of jurisdiction upon the sea, and within a limit that is variously stated, has been conceded to maritime nations, is found in the necessities of self-defense. This part of the dominion over the sea, whether it be greater or less, has never been surrendered. It is a remnant of the former more extended dominion, retained for the same reason for which that was asserted. Lord Chief Justice Cockburn, in his opinion in the case just cited, reviews the history of this subject, quoting the language of every previous writer of repute, and referring to every judicial decision respecting it which then existed. He points out very clearly the different views that have prevailed and which then prevailed as to the nature of the jurisdiction, and as to the distance over which it could be extended. This limit has been variously asserted by writers of distinction and authority, at two days' sail, one hundred miles, sixty miles, the horizon line, as far as can be seen from the shore, as far as bottom can be found with the dead line, the range of a cannon shot, two leagues, one league, or so far as the Government might think necessary.[1]

On the other point, the character of the jurisdiction, it may be assumed that by the controlling opinion of the present time, and by the usage of nations, it is not regarded as so far absolute that a nation may exclude altogether from within the range of cannon shot the ships of another country, innocently navigating, and violating no reasonable regulation of the municipal law. But the power which may be exerted within that limit is only coextensive with the just requirements of the self protection for which it exists, although undoubtedly the nation exercising the jurisdiction must be allowed, so long as it acts in good faith, to be its own judge as to the regulations proper to be prescribed and the manner of their enforcement.[1]

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[1] The lord chief justice observes: "From the review of these authorities we arrive at the following results: There can be no doubt that the suggestion of Bynkershoek that the sea surrounding the coast to the extent of cannon range should be treated as belonging to the state owning the coast, has, with but very few exceptions, been accepted and adopted by the publicists who have followed him during the last two centuries. But it is equally clear in the practical application of the rule in the respect of the particular of distance, as also in the still more essential particular of the character of sovereignty and dominion to be exercised, great differences of opinion have prevailed and still continue to exist. As regards distance, while the majority of authors have adhered to the three-mile zone, others, like M. Ortolan and Mr. Halleck, applying with greater consistency the principle on which the whole doctrine rests, insist on extending the distance to the modern range of cannon —in other words, doubling it. This difference of opinion may be of little practical importance in the present circumstances, inasmuch as the place at which the offense occurred was within the lesser distance; but it is nevertheless not immaterial as showing how unsettled this doctrine still is. The question of sovereignty, on the other hand, is all important, and here we have every shade of opinion. * * * Looking at this we may properly ask those who contend for the application of the existing law to the littoral sea, independently of legislation, to tell us the extent to which we are to go in applying it. Are we to limit it to three miles, or to extend it to six? Are we to treat the whole body of the criminal law as applicable to it, or only so much as relates to police and safety? Or are we to limit it, as one of these authors proposes, to the protection of fisheries and customs, the exacting of harbor and like dues, and the protection of our coasts in time of war? Which of these writers are we to follow?"

This somewhat indefinite area of a greater or less jurisdiction over the marginal sea, which has thus come to be recognized and conceded, though accorded for the purposes of national self-protection, is by no means its boundary. It illustrates the right of which it is an example, but does not exhaust it. It is but one application of the principle out of many. The necessity which gave rise to it justifies likewise the larger power, and further means of defence, which may from time to time be required. No nation, in whatever statute or treaty it may have assented to the three-mile or cannon-shot limit of municipal jurisdiction, has ever agreed to surrender its right of self defense outside of that boundary, or to substitute for that right the contracted and qualified power which is only one of the results of it and which must often prove inadequate or inapplicable. On the contrary, as will be seen hereafter, many nations have been compelled to assert, and have successfully asserted, much wider and larger powers in the defence of their manifold interests.

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[1] Says Sir Robert Phillimore, in his opinion in Queen *v.* Kehn: "The sound conclusions which result from the investigation of the authorities which have been referred to appear to me to be these: The consensus of civilized independent states has recognized a maritime extension of frontier to the distance of three miles from low water mark, because such a frontier or belt of water is necessary for the defence and security of the adjacent state.

"It is for the attainment of these particular objects that a dominion has been granted over these portions of the high seas.

"This proposition is materially different from the proposition contended for, viz: that it is competent to a state to exercise within these waters the same rights of jurisdiction and property which appertain to it in respect to its lands and its ports. There is one obvious test by which the two sovereignties may be distinguished.

"According to modern international law it is certainly a right incident to each state to refuse a passage to foreigners over its territory by land, whether in time of peace or war. But it does not appear to have the same right with respect to preventing the passage of foreign ships over this portion of the high seas.

"In the former case there is no *jus transitus;* in the latter case there is.

"The reason of the thing is that the defence and security of the state does not require or warrant the exclusion of peaceable foreign vessels from passing over these waters, and the custom and usage of nations has not sanctioned it."

Lord Cockburn, in Queen *v.* Kehn, speaking of the claim that a nation has the right of excluding foreign ships from innocent passage within the three-mile limit, says it is a "doctrine too monstrous to be admitted." And again, "No nation has arrogated to itself the right of excluding foreign vessels from the use of the external littoral waters for the purpose of navigation."

It is under the operation of the same principle on which jurisdiction is awarded to nations over the sea within the 3-mile or cannon-shot limit, that a similar jurisdiction is allowed to be exercised not only over navigable rivers, bays, and estuaries, which may be fairly regarded as lying within territorial boundaries, but over those larger portions of the ocean comprised within lines drawn between distant promontories or headlands, and often extending much more than three miles from the nearest coast. Such waters were formerly known in English law as "the King's Chambers."[1]

Chancellor Kent remarks on this subject (1 Com., pp. 30, 31):

> Considering the great extent of the line of the American coasts, we have a right to claim for fiscal and defensive regulations a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi.

The principle on which this exercise of maritime jurisdiction reposes is only that of self-defense. As Chancellor Kent further observes (1 Com., p. 26):

> Navigable rivers which flow through a territory, and the seacoast adjoining it * * * belong to the sovereign of the adjoining territory, as being necessary to the safety of the nation and to the undisturbed use of the neighboring shores.

That the right of self-defense is not limited by any physical boundary, but may be exerted wherever and whenever necessity requires it, upon the high sea or even upon foreign territory, is not only the inevitable result of the application of just principles, but is established by the highest authorities in the law of nations.

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[1] Sir Henry Maine says (Lectures on International Law, p. 80): "Another survival of larger pretensions is the English claim to exclusive authority over what were called the King's Chambers. These are portions of the sea cut off by lines drawn from one promontory of our coast to another, as from Lands End to Milford Haven. The claim has been followed in America, and a jurisdiction of the like kind is asserted by the United States over Delaware Bay and other estuaries which enter into portions of their territory."

Vattel says upon this subject (p. 128, sec. 289):

> It is not easy to determine to what distance the nation may extend its rights over the sea by which it is surrounded. * * * Each state may on this head make what regulation it pleases so far as respects the transactions of the citizens with each other, or their concerns with the sovereign; but, between nation and nation, all that can reasonably be said is that in general the dominion of the state over the neighboring seas extends as far as her safety renders it necessary, and her power is able to assert it.

Chancellor Kent observes (1 Com., p. 29):

> It is difficult to draw any precise or determinate conclusion amidst the variety of opinions as to the distance to which a state may lawfully extend its exclusive dominion over the sea adjoining its territories and beyond those portions of the sea which are embraced by harbors, gulfs, bays, and estuaries, and over which its jurisdiction unquestionably extends. All that can reasonably be asserted is, that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety and for some lawful end.

And states may exercise a more qualified jurisdiction over the seas near their coast for more than the three (or five) mile limit for fiscal and defensive purposes. Both Great Britain and the United States have prohibited the transshipment within four leagues of their coast of foreign goods without payment of duties.[1] (Kent Com. I, p. 31.)

In the case of Church v. Hubbart (2 Cranch, Rep. 287), the Supreme Court of the United States unanimously held that "the right of a nation to seize vessels attempting an illicit trade is not confined to their harbors or to the range of their batteries." It appeared in that case that Portugal had prohibited trade with its colonies by foreigners. A foreign vessel found to have been intending such trade was seized on the high seas, carried into a Portuguese port, and there condemned. And it was held that the seizure was legal, Chief Justice Marshall delivering the opinion of the court. He points out with great clearness the difference between the right of a nation to exercise jurisdiction, and its right of self-defense.[1]

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[1] Mr. Twiss says (vol. I, pp. 241, 242, Int. Law): "Further, if the free and common use of a thing which is incapable of being appropriated were likely to be prejudicial or dangerous to a nation, the care of its own safety would authorize it to reduce that thing under its exclusive empire if possible, in order to restrict the use of it on the part of others, by such precautions as prudence might dictate."

Wildman, on the same point says (Int. Law, vol. I, p. 70): "The sea within gunshot of the shore is occupied by the occupation of the coast. Beyond this limit maritime states have claimed a right of visitation and inquiry within those parts of the ocean adjoining to their shores, which the common courtesy of nations had for their common convenience allowed to be considered as parts of their dominions for various domestic purposes, and particularly for fiscal and defensive regulations more immediately affecting their safety and welfare."

Creasy (Int. Law, sec. 245) remarks: "States may exercise a qualified jurisdiction over the seas near their coasts for more than the three (or five) miles limit, for fiscal and defensive purposes, that is, for the purpose of enforcement of their revenue laws, and in order to prevent foreign armed vessels from hovering on their coasts in a menacing and annoying manner."

And Halleck says (Int. Law, chap. 6, sec. 13) the three-mile belt is the subject of territorial jurisdiction. "Even beyond this limit states may exercise a qualified jurisdiction for fiscal and defensive purposes."

Lord Chief Justice Cockburn, in his opinion in the case of Queen *v.* Kehn, *supra*, cites this decision with approval, and quotes from the opinion. He says (2 Law Rep., 214):

> Hitherto legislation, so far as relates to foreigners in foreign ships in this part of the sea, has been confined to the maintenance of neutral rights and obligations, the prevention of breaches of the revenue and fishery laws, and, under particular circumstances, to cases of collision. In the two first, the legislation is altogether irrespective of the three-mile distance, being founded on a totally different principle, viz, the right of the state to take all necessary measures for the protection of its territory and rights, and the prevention of any breach of its revenue laws. This principle was well explained by Marshall, C. J., in the case of Church *v.* Hubbart.

The opinion of Chief Justice Marshall and the language of Lord Cockburn, above cited, very clearly illustrate the distinction between a municipal statute and a defensive regulation. The one emanates from the legislative power, and has effect only within the territorial jurisdiction in which it is enacted, and upon those subject to that jurisdiction elsewhere. The other is the exertion of executive authority when necessary for the protection of the national interest, and may take place wherever that necessity exists. Statutes intended for such protection may, therefore, have effect as statutes within the jurisdiction, and as defensive regulations without it, if the Government choose so to enforce them, provided only that such enforcement is necessary for just defense, and that the regulations are reasonable for that purpose. (*Infra*, pp. 169–171.)

Such was the view of the United States Supreme Court in the Sayward Case, in respect to the operation of the acts of Congress before referred to, for the protection of the seal in Bering Sea. In that case a Canadian vessel had been captured on the high sea by a United States cruiser, and condemned by decree of the United States District court, for violation of the regulations prescribed in those acts; and it was claimed by the owners that the capture was unjustifiable, as being an attempt to give effect to a municipal statute outside the municipal jurisdiction. The case was dismissed because it was not properly before the court. But in the opinion it is intimated that if it had been necessary to decide the question the capture would have been regarded as an executive act in defense of national interests, and not as the enforcement of a statute beyond the limits of its effect. (Case of the *Sayward*, U. S. Sup. Ct. Rept., Vol. 143.)

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[1] For full quotations from this opinion, see Appendix to this argument, *infra*, p. 181.

[2] After quoting at large from Chief Justice Marshall's opinion, Lord Cockburn proceeds to say: "To this class of enactments belong the acts imposing penalties for the violation of neutrality and the so-called 'hovering acts' and acts relating to the customs. Thus, the foreign enlistment act (33 and 34 Vic. C. 90) which imposes penalties for various acts done in violation of neutral obligations, some of which are applicable to foreigners as well as to British subjects, is extended in S. 2 to all the dominions of Her Majesty, 'including the adjacent territorial waters.'"

As such defensive regulations, if the United States Government thinks proper so to enforce them beyond the territorial line, the provisions of those acts of Congress fulfill the conditions of being both necessary and reasonable. They interfere in no respect with the freedom of the sea, except for the protection of the seal. And for the purposes of that protection they are not only such as the Government prescribes as against its own subjects, but are clearly shown by the evidence to be necessary to be so enforced, in order to prevent the extermination of the seals and its consequences to the United States.

The decision in Church *v.* Hubbart is cited as stating the law, by Chancellor Kent (1 Com., 31); and also by Mr. Wharton (Dig. Int. Law, p. 113) and by Wheaton (Int. Law, 6th ed., p. 235). It was followed in the same court by the case of Hudson *v.* Guestier (6 Cranch Rep., 281), in which it was held that the jurisdiction of the French court as to seizures is not confined to seizures made within two leagues of the coast. And that a seizure beyond the limits of the territorial jurisdiction for breach of a municipal regulation is warranted by the law of nations.

This decision overruled a previous case (Rose *v.* Himely, 4 Cranch Rep., 287) made, though upon very different facts, by a divided court. The dissenting opinion of Johnson, J., in that case, which by the subsequent decision became the law, is worthy of perusal.[1]

Mr. Dana, who published an edition of Wheaton, with notes which so far as they were his own did not add to its value, is of opinion that in the decision in Church *v.* Hubbart, Chief Justice Marshall and his eminent associates were mistaken. And this remark of his is cited in the British Case. Mr. Dana has no such repute as makes him an authority, especially when he undertakes to overrule the greatest of American judges, and the repeated decisions of the Supreme Court of the United States. No other writer or judge, so far as we are aware, has ever shared his opinion. And, as has been seen, the decision of Chief Justice Marshall has received the approval of very great lawyers.

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[1] For opinion see Appendix, *infra*, p. 182.

In the comments in his note upon these cases, Mr. Dana does not correctly state them. The decision in Church *v.* Hubbart was upon the unanimous opinion of the court, and has never been questioned except by him. The subsequent case of Rose *v.* Himely decided that the seizure of a vessel without the territorial domain of the sovereign under cover of whose authority it is made will not give jurisdiction to condemn the vessel, if it is never brought within the dominions of that sovereign. It would seem from some of the language of Chief Justice Marshall that he *may* have been of opinion that the seizure itself was unwarranted, irrespective of the fact that the vessel never was brought in, though this is by no means clear. Judges Livingston, Cushing, and Chase concurred in the decision, on the sole ground that the captured ship was not brought into a port of the country to which the capturing vessel belonged; and declined to express an opinion as to the validity of the seizure upon the high sea, for breach of a municipal regulation, provided the vessel had been so brought in. While Judge Johnson dissented altogether, holding in the opinion above referred to, that the seizure was valid, although never brought in. Mr. Dana mistakes the case of Rose *v.* Himely in saying that it was there decided that a seizure of a vessel outside of the territorial jurisdiction is unwarranted. And he mistakes the case of Hudson *v.* Guestier, in which the contrary is distinctly held, Chief Justice Marshall concurring.

The cases of the *Marianna Flora* (11 Wheaton Rep. U. S. Sup. Court), above cited, in which the opinion was delivered by Mr. Justice Story, and the case of the Schooner *Betsey* (Mason's Rep. 354), a decision of Judge Story, were to the same effect.[1]

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[1] In the recent case (1890) of Manchester *v.* Massachusetts (139 U. S. Supreme Court Rep., 240), the law on this subject was thus stated by Mr. Choate, of counsel: "Without these limits were the 'high seas,' the common property of all nations. Over these England, as one of the common sovereigns of the ocean, had certain rights of jurisdiction and dominion derived from and sanctioned by the agreement of nations expressed or implied.

"Such jurisdiction and dominion she had for all purposes of self-defense, and for the regulation of coast fisheries.

"The exercise of such rights over adjacent waters would not necessarily be limited

The Continental publicists are in full concurrence on this point with English and American authorities.[1]

In respect to the exercise of the right of self-defense, not merely upon the high seas but in the territory or territorial waters of a foreign and friendly state, authority is equally strong. Says Mr. Wharton (1 Dig. of Int. Law, p. 50):

> Intrusion on the territory or territorial waters of a foreign state is excusable when necessary for self-protection in matters of vital importance, and when no other mode of relief is attainable.

And (pp. 221, 222):

> When there is no other way of warding off a perilous attack upon a country, the sovereign of such country can intervene by force in the territory from which the attack is threatened, in order to prevent such attack.
>
> A belligerent may, under extreme necessity, enter neutral territory and do what is actually necessary for protection.

And he cites the case of Amelia Island, in respect to which he says:

> Amelia Island, at the mouth of St. Mary's River, and at that time in Spanish territory, was seized in 1817 by a band of buccaneers under the direction of an adventurer named McGregor, who, in the name of the insurgent colonies of Buenos Ayres and Venezuela, preyed indiscriminately on the commerce of Spain and of the United States. The Spanish Government not being able or willing to drive them off, and the nuisance being one which required immediate action, President

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to a 3-mile belt, but would undoubtedly be sanctioned as far as reasonably necessary to secure the practical benefits of their possession. If self-defense or regulation of fisheries should reasonably require assumption of control to a greater distance than 3 miles, it would undoubtedly be acquiesced in by other nations.

"The *marine league* distance has acquired prominence merely because of its adoption as a boundary in certain agreements and treaties, and from its frequent mention in text-books, but has never been established in law as a fixed boundary.

"These rights belonged to England as a member of the family of nations, and did not constitute her the possessor of a proprietary title in any part of the high seas nor add any portion of these waters to her realm. In their nature they were rights of dominion and sovereignty rather than of property."

Mr. Justice Blatchford, in delivering the opinion of the court, says: "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast; that bays wholly within its territory, not exceeding two marine leagues in width at the mouth, are within this limit; and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory, free-swimming fish, or free-moving fish, or fish attached to or embedded in the soil. The open sea within this limit is, of course, subject to the common right of navigation, and all governments, for the purpose of selfprotection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit."

[1] For citations from Azuni, Plocque, La Tour, Calvo, Heffter, Bluntschli, and Carnazza-Amari, see Appendix, *infra*, pp. 183–186.

Monroe called his Cabinet together in October, 1817, and directed that a vessel of war should proceed to the island and expel the marauders, destroying their works and vessels.

In the case of the Caroline, in the year 1838, during the Canadian rebellion, a British armed force pursued that vessel into an American port on Lake Erie, cut her out and destroyed her by fire, killing one or more of her crew. This otherwise gross violation of the territory of a friendly nation was justified by the British Government as a necessary measure of self-defense, since the Caroline had been engaged in carrying supplies to the insurgents. In the correspondence that ensued between the two governments, the British right to intrude as they did upon American territory was conceded by Mr. Webster, the American Secretary of State, provided the necessities of self-defense required it, and the only question made was whether the necessity for its exercise actually existed. In the end, that point seems to have been given up, and no reparation or apology was ever made. Though it is certainly difficult to see how any greater necessity was to be found in that case than may always be said to exist for attacking an enemy's ship, the case presents a very strong illustration of the application of an undoubted principle. A very interesting discussion of the question will be found in the correspondence.[1]

Phillimore says of the Caroline case (vol. I, p. 255, sec. CCXVI):

> The act was made the subject of complaint on the ground of violation of territory by the American Government, and vindicated by Great Britain on the ground of self-preservation; which, if her version of the facts were correct, was a sufficient answer and a complete vindication.

Hall (Int. Law, p. 267, par. 34) expresses similar views.

In 1815, under orders of Mr. Monroe, measures were taken for the destruction of a fort held by outlaws of all kinds on the Appalachicola River, then within Spanish territory, from which parties had gone forth to pillage within the United States. The governor of Pensacola had been called upon to repress the evil and punish the marauders, but he refused; and on his refusal the Spanish territory was entered, and the fort attacked and destroyed, on the ground of necessity.

A similar case was that of Greytown. It was a port on the Mosquito coast, in which some United States citizens resided. These citizens, and others interested with them in business, were subjected to gross indignities and injuries by the local authorities, who were British, but who professed to act from the authority of the king or chief of the Mosquito Islands. The parties then appealed to the commander of the United States sloop of war *Cyane*, then lying near the port, for protection. To punish the authorities for their action he bombarded the town. For this act he was denounced by the British residents, who claimed that the British Government had a protectorate over that region. His action was sustained by the Government of the United States, the ground being the necessity of punishing in this way the wrong to citizens of the United States, and preventing its continuance. (1 Wharton's Dig., p. 229.)

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[1] For correspondence between Mr. Webster and Lord Ashburton, and remarks of Mr. Calhoun and Lord Campbell, see Appendix, *infra*, p. 186.

> When the sovereign of a territory permits it to be made the base of hostilities by outlaws and savages against a country with which such sovereign is at peace, the government of the latter country is entitled, as a matter of necessity, to pursue the assailants wherever they may be, and to take such measures as are necessary to put an end to their aggressions. (*Ib.*, p. 226.)
>
> An incursion into the territory of Mexico for the purpose of dispersing a band of Indian marauders, is, if necessary, not a violation of the law of nations. (*Ib.*, p. 233.)[1]

In all these cases the discussion proceeded upon the question of the existence of the particular necessity. The right to enter upon neutral territory, if necessity really required it, was not controverted by any of the governments concerned.

A still more striking illustration of the exercise of the national right of self-defense upon the high seas, at the expense of innocent commerce, and to the entire subordination of private rights, which, except for the consequences to national interests, would have been unquestionable, is found in the British Orders in Council in the year 1809, prohibiting neutral commerce of every kind with ports which the Emperor of France had declared to be closed against British trade. The effect of these orders was to arrest upon the sea the lawful trade of neutrals, not with blockaded ports, nor even belligerent ports not blockaded, but with neutral ports. Yet the validity of these orders upon the principles of international law, severe as their consequences were, was affirmed by the great judicial authority of Lord Stowell, then Sir William Scott, in several cases of capture that came before him in admiralty, upon the ground that they were necessary measures of self-defense to which all private rights must give way.

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[1] "Temporary invasion of the territory of an adjoining country, when necessary to prevent and check crime, 'rests upon principles of the law of nations entirely distinct from those on which war is justified—upon the immutable principles of self-defense—upon the principles which justify decisive measures of precautions to prevent irreparable evil to our own or to a neighboring people.'" (Mr. Forsyth, Sec. of State, 1 Wharton, p. 230.)

"The first duty of a government is to protect life and property. This is a paramount obligation. For this governments are instituted, and governments neglecting or failing to perform it become worse than useless. * * * The United States Government cannot allow marauding bands to establish themselves upon its borders with liberty to invade and plunder United States territory with impunity, and then, when pursued, to take refuge across the Rio Grande under the protection of the plea of the integrity of the soil of the Mexican Republic." (Mr. Evarts, Sec. of State, 1 Wharton, p. 232.)

In the case of the *Success* (1 Dodson Rep., p. 133), he said:

> The blockade thus imposed is certainly of a new and extended kind, but has arisen necessarily out of the extraordinary decrees issued by the ruler of France against the commerce of this country, and subsists, therefore, in the apprehension of the court at least, in perfect justice.

In the case of the *Fox* (1 Edwards Adm. Rep., 314), he remarked in reference to the same orders:

> When the state, in consequence of gross outrages upon the laws of nations committed by its adversary, was compelled by a necessity which it laments, to resort to measures which it otherwise condemns, it pledged itself to the revocation of those measures as soon as the necessity ceases.

Again, speaking of those retaliatory measures as necessary for the defense of commerce, he says in another case:

> In that character they have been justly, in my apprehension, deemed reconcilable with those rules of natural justice by which the international communication of independent states is usually governed. (*The Snipe*, Edw. Adm. Rep., 382.)

Lord Stowell's judgments in these cases have never been criticised or disapproved by any court of justice, nor by any writer of repute on international law. The necessity relied upon might perhaps be questioned, but when that is established, it is not to be doubted that it becomes the measure of the right.

Another very forcible illustration of the principle contended for, is to be seen in the exclusive right asserted by Great Britain to the fisheries on the Newfoundland and Nova Scotia coasts, not only within what are called the territorial seas, but as far from the coast as the fisheries extend. The full diplomatic discussion of this subject will be found in the "*Documents relating to the transactions at the negotiation of Ghent, collected and published by John Quincy Adams, one of the Commissioners of the United States.*" The occasion was the negotiation of the treaty of peace between the United States and Great Britain, at the conclusion of the war of 1812.

One material question very much discussed and considered, was the right to be accorded to the United States in these fisheries. By the treaty of 1783 between those countries, at the close of the Revolutionary War, certain rights in them had been conceded by Great Britain to her colonies, whose independence was in that treaty admitted. When the treaty of 1815 was made, it was claimed by Great Britain that the treaty of 1783 had been abrogated by the subsequent war, and that the right of the Americans to participate in the fisheries, granted by that treaty, had by its abrogation been lost. The relative contentions of the parties will be clearly seen by perusal of Mr. Adams's exhaustive résumé of the history and merits of the question, and from the citations he adduced. (Pp. 106–109, 167–169, 184–185, 187–190.)

It was contended by Great Britain and conceded by the United States that all those fisheries, both within and without the line of territorial jurisdiction, were previous to the Revolutionary War, the exclusive property of Great Britain, as an appurtenant to its territory. On this point there was no dispute, although the fisheries in question extended in the open sea almost five degrees of latitude from the coast, and along the whole northern coast of New England, Nova Scotia, the Gulf of St. Lawrence, and Labrador.[1]

Upon this view, entertained by both nations and by all the eminent diplomatists and statesmen who participated in making or discussing these treaties, the contention turned upon the true construction of the grant of fishing rights contained in the treaty of 1783. It was claimed by the British Government that this was a pure grant of rights belonging exclusively to Great Britain, and to which the Americans could have no claim, except so far as they were conferred by treaty. It was contended on the other side, that the Americans, being British subjects up to the time of the Revolutionary War, entitled and accustomed as such to share in these fisheries, the acquisition of which from France had been largely due to their valour and exertions, their right to participate in them was not lost by the Revolution, nor by the change of government which it brought about, when consummated by the treaty of 1783. And that the provisions of that treaty on the subject were to be construed, not as a grant of a new right, but as a recognition of the American title still to participate in a property that before the war was common to both countries. Which side of this contention was right it is quite foreign to the present purpose to consider. It is enough to perceive that it never occurred to the United States Government or its eminent representatives to claim, far less to the British Government to concede, nor to any diplomatist or writer, either in 1783 or 1815, to conceive, that these fisheries, extending far beyond and outside of any limit of territorial jurisdiction over the sea that ever was asserted there or elsewhere, were the general property of mankind, or that a participation in them was a part of the liberty of the open sea. If that proposition could have been maintained, the right of the Americans would have been plain and clear. No treaty stipulations would have been necessary at the end of either war. (See also Wharton's Dig. vol. III, pp. 39–48.)

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[1] For full quotations from Mr. Adams, see Appendix, *infra*, pp. 187–189.

It will be perceived, also, that in the case of these fisheries there was no pretense that an exclusion of the world from participating in them outside the line of the littoral sea was necessary to their preservation, or that such participation would tend to their extinction; though unquestionably it might lead to a diminution of the profits to be derived from them by the inhabitants of the territory to which they appertained.

If the countries now contending were right, then in the views entertained by both governments and by all who were concerned for them, in cabinets, diplomacy, Congress, and Parliament, and in the claims then made, conceded and acted upon ever since, the precedent thus established must be decisive between them in the present case. There can not be one international law for the Atlantic and another for the Pacific. If the seals may be treated, like the fish, as only *feræ naturæ*, and not property, if the maintenance of the herd in the Pribilof Islands is only a fishery, how then can the case be distinguished from that of the fisheries of Nova Scotia and Newfoundland? Why would it not be, until conceded away by treaty or thrown open to the world by consent, a proprietary right belonging to the territory to which it appertains, and which the Government has a right to defend?

But the case of the seal industry is far stronger than that of the fisheries in favour of such a right. The great facts of the nature of the animals, their attachment to the land, without which they could not exist, their constant *animus revertendi*, the protection there, in default of which they would perish, and the absolute necessity of excluding outside interference with them, in order to prevent their extinction, not only greatly strengthen the proprietary title, but annex to it the further and unquestionable right of self-defense, in respect to those interests on shore in which the property is not denied nor open to dispute.

The jurisdiction accorded to nations over the littoral seas is by no means the only instance in which rules of international law, now completely established and universally recognized, and under which the freedom of the sea has been largely abridged, have arisen out of the right and necessity of self-defense, and out of the general principle that to such necessity individual rights and the acquisition of private emoluments upon the ocean must give way.

Some of these rules relate to the interests of nations when engaged in war, and others, like that which concedes the jurisdiction over territorial seas, chiefly to the interests of peace.

The right of self-defense, as affecting nations, is no greater in war than in peace. Certain necessities are sometimes greater in one state than in the other. But in both the measure of the necessity is the measure of the right, and the justifiable means of self-protection are such as the case requires. It is the principle that controls the case, not the case that controls the principle. The state of war only exists between the belligerents, and is only material between them and neutrals, so far as it gives rise to a particular necessity on the part of a belligerent, that would not otherwise arise.

The international law of piracy is an infringement of the right which even a criminal has, to be tried in the jurisdiction where his crime was committed, and if upon the high sea, in the jurisdiction to which his vessel belongs. Such is the rule in respect to every other crime known to the law. But if an American in an American ship commits an act of piracy on the high seas on a British vessel, he may, by the rules of international law, be captured by a French cruiser, taken into a French port, and there tried and executed, if France thinks proper to extend the jurisdiction of her courts to such a case. The reason of this well-settled rule is not found in the character of the crime, which is but robbery and murder at worst, but in the necessity of general defense, in which all sea-going nations have a like interest and therefore a like right to intervene, without waiting for the tardy or uncertain action of others.

The slave trade is an offense for which the sea is not free, though not yet regarded in international law as piracy, because there are still countries where slavery is legalized. But there is no question that a nation whose laws prohibit slavery may capture on the high sea any vessel laden with slaves intended to be landed on her coast, or any vessel sailing for the purpose of prosecuting the slave trade on her shores. Nor is there any doubt that so soon as the abolition of slavery becomes universal, international law will sanction dealing with a slaver as with a pirate, and for the same reason of general self-defense.

Nor is the sea free to any vessel whatever, not carrying the flag of some country, and shown by its papers to be entitled to carry that flag; and the armed vessel of any nation may capture a vessel not so protected. Sailing independently of any particular nationality is harmless in itself, and may be consistent with entire innocence of conduct. But if allowed, it might offer a convenient shelter for many wrongs, and it is therefore prohibited by the law of nations.

Innocent trade may also be prohibited by any nation between other nations and its colonies, for reasons of policy. Such restrictions have been frequent, and their propriety has never been questioned. That a vessel engaged in such prohibited trade may be captured on the high seas and condemned, is shown by the case of Church *v.* Hubbart, and other authorities above cited.

These are instances of the exercise upon the sea of the general right of self-protection, for the common benefit of nations, irrespective of the particular necessity of any one country. In most cases, restrictions imposed upon the freedom of the sea arise out of some particular national necessity.

Thus it is well settled, that any vessel guilty of an infraction of a revenue or other law within the territorial waters of a nation, may be pursued and captured on the high seas; because, otherwise, such laws, devised for the protection of the national interests, might fail of being adequately enforced.

Upon this principle also, was based the British act putting restrictions upon the passage of a vessel on the high sea, approaching Great Britain from a port where infectious disease was raging. Quarantine and health regulations are usually enforced within the jurisdictional limit, and so confined, are in ordinary cases sufficient for their purpose. But when in a particular case they are insufficient, and the necessity of protecting the country from incursion of dangerous disease requires it, no right of freedom of the sea stands in the way of putting proper restrictions on the approach of vessels, at any distance from the shore that may be found requisite. (6 Geo. IV, chap. 78.)

The very grave, and often, to innocent individuals, ruinous restraints upon neutral trade for the interest of belligerents, the validity of which has long been established in international law, afford a strong example of the application of the same principle. If a port is blockaded, no neutral ship can enter it for any purpose whatever, even for the continuance of a regular and legitimate commerce established before the war began. And such ship is not only prevented from entering the port, on pain of capture and confiscation of vessel and cargo, but is liable to be captured anywhere upon the high seas and condemned, if it can be shown either that the voyage is intended for a breach of the blockade, or that such breach has actually taken place. And, though such is not the general rule, it is shown by the decision of Lord Stowell, before cited, that if the necessities of a successful prosecution of the war require it, a belligerent may even interdict neutral commerce with ports not blockaded. Admitted by that great judge that such a measure is unusual, harsh, and distressing, and not to be resorted to without necessity, it is nevertheless held to be justifiable when the necessity does actually arise, though that necessity is only for the more effectual prosecution of a war.

The same rule applies to the conveyance by a neutral to a belligerent port, of freight which is contraband of war, though such freight may not be designed to be in aid of the war, but may be only the continuance of a just and regular commerce, before established. And a vessel may be captured anywhere on the high seas if found to be engaged in that business.

And so if a neutral vessel is engaged in the conveyance of belligerent dispatches or of passengers belonging to the military or naval service of a belligerent, though the vessel so employed may be a regular passenger ship on its accustomed route as a common carrier.

Hostile freight on a neutral ship has long been held liable to capture. If the rule that the flag covers the cargo may now be said to be established, it is of comparatively recent origin.

Upon the same principle has been maintained the right of visitation and search, as against every private vessel on the high seas, by the armed ships of any other nationality. Though this vexatious and injurious claim has been much questioned, it is firmly established in time of war, at least, as against all neutrals. Says Sir William Scott, in the case of *Le Louis* (2 Dodson, 244):

> This right (of search), incommodious as its exercise may occasionally be, * * * has been fully established in the legal practice of nations having for its foundation the necessities of self-defense.[1]

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[1] Says Mr. Twiss (Rights and Duties of Nations in Time of War ed. 1863, p. 176):

"The right of visiting and searching merchant ships on the high seas, observes

It has been said that the right of search is confined to a time of war. That assertion proceeds upon the ground that only in time of war can the necessity for it arise. No one has ever claimed that the right should be denied in time of peace, if an equal necessity for it exists. And when such necessity has been regarded as existing, the right has been asserted. Prior to the war of 1812, between the United States and Great Britain, the latter country claimed the right in time of peace to search American ships on the high seas for British subjects serving as seamen. Though the war grew out of this claim, it was not relinquished by Great Britain when a treaty of peace was made. It has been disused, but never abandoned. The objection to it on the part of the United States was the obvious one that it was founded upon no just necessity or propriety. Had it been a measure in any reasonable sense necessary to self-defense on the part of Great Britain, its claim would have rested on a very different foundation, and would have been supported by the analogy of all similar cases. The right of search is exercised without question as against private vessels suspected of being engaged in the slave trade. And it is very apparent, that as the increasing exigencies of international intercourse of all kinds render it necessary, the principle that allows it in time of war will be found sufficient to allow it in time of peace. The rule, as has been seen, grows out of necessity alone, and must therefore extend with the necessity.

Lord Aberdeen, in a letter of 20th of December, 1841, to Mr. Everett, American minister (British and Foreign State Papers, vol. 30, p. 1177), claims the right of visitation of vessels on high seas in time of peace, far enough at least to ascertain their nationality. And in his dispatch to Mr. Fox, says:

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Lord Stowell in the well-known case of the Swedish convoy, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned ship of a belligerent nation; because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists."

Every vessel is bound to submit to visitation and search, whether it be the vessel of a friend or of an ally or even of a subject; and submission may be compelled, if necessary, by force of arms, without giving claim for any damage incurred thereby, if the vessel upon visitation should be found not liable to be detained. * * * If the vessel be neutral, a belligerent is entitled to ascertain whether there is a contraband of war or enemy's dispatches or military or naval officers of the enemy on board.

"If the master of a neutral vessel resists by force (the right of search) that is a ground of confiscation, and consequently of capture." (Wildman's Rights of Vessels, chap. 2, p. 6.)

> That it (the British Government) still maintains, and would exercise when necessary its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if in the exercise of this right, either from involuntary error or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded: but that it should entertain for a single instant the notion of abandoning the right itself would be quite impossible. (Webster's Works, vol. 6, p. 334.)

Mr. Webster disputes this right, but has to admit that it does exist when specially necessary. He says:

> That there is no right to visit in time of peace *except* in the execution of revenue laws or other municipal regulations, in which cases the right is usually exercised near the coast or within the marine league, or where the vessel is justly suspected of violating the law of nations by piratical aggression; but wherever exercised, it is a right of search. (Webster's Works, vol. VI, p. 336.)

The principle that thus subordinates private right to national necessity, is well stated by Mr. Manning (Int. Law, chap. 3, p. 252):

> The greatest liberty which law should allow in civil government, is the power of doing everything that does not injure any other person, and the greatest liberty which justice among nations demands, is that every state may do anything that does not injure another state with which it is at amity. The freedom of commerce and the rights of war, both undoubted as long as no injustice results from them, become questionable as soon as their exercise is grievously injurious to any independent state, but the great difference of the interest concerned makes the trivial nature of the restriction that can justly be placed upon neutrals appear inconsiderable, when balanced against the magnitude of the national enterprises which unrestricted neutral trade might compromise. That some interference is justifiable, will be obvious on the consideration that if a neutral had the power of unrestricted commerce, he might carry to a port blockaded and on the point of surrendering, provisions which should enable it to hold out and so change the whole issue of a war; and thus the vital interests of a nation might be sacrificed to augment the riches of a single individual.

Azuni carries the principle still further, and holds that even national rights should yield to the rights of another nation, when the consequences to the latter are the more important. He remarks (part II, chap. III, art. 2, sec. 4, p. 178):

> When the perfect right of one nation clashes with the perfect right of another, reason, justice, and humanity require that in such case the one that will experience the least damage should yield to the other.

And Paley, in a striking passage, applies the same principle even to the obligation to observe treaties, one of the highest obligations known to international law. (Moral Philosophy, book 6, chap. 12.)

> When the adherence to a public treaty would enslave a whole people, would block up seas, rivers, or harbors, depopulate cities, condemn fertile regions to eternal desolation, cut off a country from its sources of provision or deprive it of those commercial advantages to which its climate, productions, or commercial situation naturally entitle it, the magnitude of the particular evil induces us to call in question the obligation of the general rule. Moral philosophy furnishes no precise solution to these doubts. * * * She confesses that the obligation of every law depends upon its ultimate utility; that this utility having a finite and determinate value, situations may be feigned and consequently may possibly arise, in which the general tendency is outweighed by the enormity of the particular mischief.

In all these cases of restrictions upon private rights on the high seas, familiar and well settled, the principle upon which they rest is the same, the subordination of individual interest to that of a nation, when necessity requires it. Upon no other ground could they be defended. Grotius, speaking of neutral trade in articles not usually contraband of war, but used indiscriminately in war and peace, such as money, provisions, &c., says (book III, ch. 1, sec. 5):

> For, if I can not defend myself without seizing articles of this nature which are being sent to my enemy, necessity gives me the right to seize them, as we have already explained elsewhere, under the obligation ot restoring them unless there be some other reason supervening to prevent me.

Mr. Wheaton, commenting upon this opinion of Grotius, points out that it is placed by that author entirely upon the ground of the right of self-defense, under the necessities of a particular case; that Grotius does not claim that the transportation of such property is illegal in itself, or exposes the vessel carrying it to capture; but that necessity nevertheless justifies in the case in which it actually arises, the seizure of the vessel as a measure of self-defense. And he shows by further reference that it was the opinion of Grotius that a necessity of that sort exempts a case from all general rules. (Law of Nations, p. 128.)

Mr. Manning (p. 263) thus defines the rights of belligerents as against neutral commerce:

> "It consists merely in preventing vessels from interfering with the rights of belligerents, and seeking their own emolument at the direct expense of one party in the contest."

And Azuni (part 2, chap. II, art. 2, sec. 14, p. 91) remarks:

> "The truth of this theory (right of neutral trade) does not, however, deprive belligerents of the right of stopping the commerce of neutrals with the enemy, when they deem it necessary for their own defense."

The illustrations thus cited are cases of such common and frequent occurrence, that the rules which control them have become exactly formulated by courts of justice, as well as by writers on the subject, and have passed by common consent and usage into the domain of settled international law.

But many instances have occurred in the history of nations, exceptional in their character and not provided for under any general rule, where a similar necessity to that which dictated those rules has required an analogous act of self-defense by a nation in some particular case. And such protection has been extended, through both legislative and executive action, by the governments affected. Some of these instances may be usefully referred to, since they are in complete analogy to the present case, except that, both in respect to the necessity that prompted them and the importance of the injury sought to be restrained, they all fall far short of the exigency here under consideration.

In the valuable pearl fisheries of Ceylon, the British authorities have long excluded all other nations from participation in or interference with them, though these fisheries extend into the open sea for a distance varying from 6 to 20 miles from the shore.

A regulation was enacted by the local British authorities, of March 9, 1811, authorizing the seizure and forfeiture of any vessel found hovering on the pearl banks on the west coast of Ceylon, on water of between 4 and 12 fathoms, the same being an area of the open sea extending 90 miles up and down the coast and of variable width, but distant *about 20 marine miles* from the coast at the farthest point. This regulation is still in force. (Regulations No. 3, of 1811, for the protection of Her Majesty's pearl banks of Ceylon.)

An ordinance issued in 1842 prohibited the use of any dredge for fishing within the limits of the pearl banks, on pain of forfeiture and imprisonment.

The ordinance of November 30, 1843, prohibited the possession or use of nets, dredges, and other instruments such as might be prejudicial to the Government pearl banks, *within* 12 *miles* of any part of the shore lying between two designated points. The penalties annexed were forfeiture and imprisonment. Suspected persons might be searched. This regulation is still in force. (No. 18, 1843, an ordinance to declare illegal the possession of certain nets and instruments within certain limits.)

The ordinance of November 18, 1890, prohibited all persons from fishing for chanks, bêches-de-mer, corals, or shells, within an area lying inside of a straight line drawn up and down the coast, the ends being distant 6 *miles from shore*, and the most remote point being distant over 20 *miles from shore*. Forfeiture, fine, and imprisonment were the penalties prescribed. This regulation is still in force. (No. 18, 1890, an ordinance relating to chanks.) (For copies of these acts, see Case of the United States, App., Vol. I, p. 461.)

An act passed in 1888 by the federal council of Australia extended (with respect to British vessels) the local regulations of Queensland on the subject of the pearl fisheries to an area of open sea off the coast of Australia, varying in width from 12 *to* 250 marine miles. Fines, seizures, and forfeitures were the penalties prescribed. (51 Vict., No. 1.)

An act passed in 1889 by the federal council of Australia extended (with respect to British vessels) the local regulations of western Australia on the subject of the pearl fisheries to an area of open sea off the northwestern coast of Australia lying within a parallelogram of which the northwestern corner is 500 *marine miles* from the coast. (52 Vict., 4th Feb., 1889, Case of the United States, App., Vol. I, p. 468.)

Similar restrictions upon the pearl fisheries in the open sea have been likewise interposed by the Government of Colombia.

A decree by the governor of Panama in the United States of Colombia, in 1890, prohibited the use of diving machines for the collection of pearls within a section of the Gulf of Panama, which is between 60 and 70 marine miles in width, and of which the most remote point is 30 marine miles from the main land. (Gaceta de Panama, February 6, 1890, Case of the United States, App., Vol. I, p. 485.)

Legislation of the same character has also taken place in France and Italy in reference to coral reefs in the open sea and outside the jurisdictional limits.

The French law of 1864 relating to the coral fisheries of Algeria and Tunis required all fishermen to take out licenses to fish anywhere on the coral banks, which extend into the Mediterranean 7 *miles* from shore. In addition to this license all foreign fishermen were required to take out patents from the Government, for which a considerable sum had to be paid; and by the recent act of 1888, foreign fishermen are precluded entirely from fishing within 3 miles from shore, apparently leaving the former regulations in force with respect to such portions of the coral banks as lie outside of those limits. (Journal Officiel, March 2, 1888), (Case of the United States, App., Vol. I, p. 469.)

By a law enacted in Italy in 1877, and a decree issued in 1892, licenses are required of all vessels operating on the coral banks lying off the coast of Sardinia, at distances which vary from 3 *to* 15 *miles* from land.

Under the regulations there prescribed, the discoverer of a new coral bed at any point is entitled to take possession of it, and to identify his discovery by means of a buoy suitably marked, which confers upon him the privilege of working the bank as a private monopoly for two years.

Off the southwestern coast of Sicily there are three coral reefs, situated, respectively, at a distance of 14, 21, *and* 32 *miles* from shore.

The Italian law of 1877 and decree of 1882 extend to these, subject to the modifications introduced by the three following decrees. (Official Pamphlets, No. 3706, series 2 of March 4, 1877; No. 1090, series 3, November 13, 1882.)

The decree of 1877 prohibited all fishing on the nearest of the three banks, viz., that situated 14 miles from shore, and provided that the other two should be divided into sections which should be fished in rotation.

The decree of 1888 prohibited all operations on all three banks until further notice, in order that the coral, which was then almost exhausted, might be given time to renew itself.

The decree of 1892 provided that fishing might begin again under the original regulations after the close of the fishing season of 1893. (Case of the United States, App., Vol. I, p. 470.)

Oyster beds in the open sea have been made the subject of similar legislation in Great Britain.

A section of the British "Sea Fisheries Act," 1868, conferred upon the Crown the right by orders in council to restrict and regulate dredging for oysters on any oyster bed within *twenty* miles of a straight line drawn between two specified points on the coast of Ireland, "outside of the exclusive fishery limits of the British Isles." The act extends to all boats specified in the order, whether British or foreign (31 and 32 Vict., ch. 45, sec. 67; Case of the United States, App., Vol. I, p. 457).

The same as to herring fisheries: "*The Herring Fishery* (*Scotland*) *Act*, 1889," conferred authority upon the Fishery Board of Scotland, to prohibit certain modes of fishing known as beam trawling and other trawling, within an area of the open sea on the northeastern coast of Scotland over 2,000 square miles in extent, of which the most remote point is about 30 *marine miles* from land (52 and 53 Vict., ch. 23, secs. 6, 7; Case of the United States, App., Vol. I, p. 458).

The taking of seal, in whatever country they have been found, has been in an especial manner the subject of legislative and governmental regulation and restriction in the open sea. And in such actions Great Britain and Canada have been conspicuous.

By an act of the British Parliament passed in 1863, the colony of New Zealand was made coextensive with the area of land and sea bounded by the following parallels of latitude and longitude, viz., 33° S., 53° S.; 162° E., 175° W. The southeastern corner of this parallelogram is situated in the Pacific Ocean over 700 miles from the coast of New Zealand (26 and 27 Vict., ch. 23, sec. 2).

In 1878 the legislature of New Zealand passed an act to protect the seal, fisheries of the colony, which provides:

(1) For the establishment of an annual close season for seals, to last from October 1 to June 1.

(2) That the governor of New Zealand might, by orders in council, extend or vary this close season *as to the whole colony or any part thereof*, for three years or less, and before the expiration of such assigned period extend the close season for another three years. (See Fish Protection Act, 1878, 42 Vict., No. 43.)

Under the authority of this statute, a continuous close season was enforced by successive orders in council, from November 1, 1881, until December 31, 1889. These extreme measures were deemed necesssary in order to prevent the complete extermination of the seals at an early date. (See Reports of Department of Marine of New Zealand for the years 1882 1885, 1886–'87, 1887–'88, 1889–'90. Also the Report of the U. S. Fish Commission.)

Another act, passed in 1884, conferred additional authority upon the governor in council to make such special, limited, and temporary regulations concerning close seasons "as may be suitable *for the whole or any part or parts of* this colony," etc. All seals or other fish taken in violation of such orders were to be forfeited with the implements used in taking them. (The Fisheries Conservative Act, 1884, 47 Vict., No. 48.)

A third act, even more stringent in its terms, was passed in 1887, which provided:

(1) That the *mere possession* of a seal by any person during a close season should be proof, in the absence of satisfactory evidence to the contrary, that it had been *illegally taken*.

(2) That all vessels taking or containing seals at such times should be forfeited to the Crow

(3) That the commander of any public vessel might seize, search, and take any vessel so offending anywhere "within the jurisdiction of the government of the colony of New Zealand."

In other words, authority was conferred by these acts to seize vessels for illegally taking seals over an area of the open sea extending at the furthest point 700 *miles* from the coast; and the government of New Zealand has since kept a cruiser actively employed in enforcing these regulations. (The Fisheries Conservative Act, 1887, 51 Vict., No. 27; Rep. of U. S. Fish Com.; Case of the United States, App., Vol. I, p. 440.)

An ordinance of the Falkland Islands, passed in 1881, established a close season for the islands and the surrounding waters, from October to April in each year. Two of the islands lie 28 miles apart, and this regulation is enforced in the open sea lying between them. (Rep. of U. S. Fish Com.; affidavit of Capt. Buddington; Case of the United States, App., Vol. I, p. 435.)

The Newfoundland Seal Fishery Act, 1892, passed in April of that year by the legislature of that country, provides:

(1) That no seals shall be killed in the seal-fishing grounds lying off the island at any period of the year, except between March 14 and April 20, inclusive, and that no seal so caught shall be brought within the limits of the colony, under a penalty of $4,000 in either instance.

(2) That no steamer shall leave any port of the colony for the seal fisheries before six o'clock a.m. on March 12, under a penalty of $5,000.

(3) That no steamer shall proceed to the seal fisheries a second time in any one year unless obliged to return to port by accident.

This act extends and enlarges the scope of a previous act, dated February 22, 1879, which contained similar provisions, but with smaller penalties, and also the provision which is still in force, that no seal shall be caught of less weight than 28 pounds. (55 Vict., Case of the United States, App., Vol. I, p. 442.)

The seal fisheries of Greenland were the subject of concurrent legislation in 1875, 1876, and 1877 by England, Norway, Sweden, Denmark, and Netherlands, which prohibits all fishing for seals by the inhabitants of those countries before April 3 in any year, within an area of the open sea bounded by the following parallels of latitude and longitude, viz., 67° N., 75° N., 5° E., 17° W. (British and Foreign State Papers, vol. LXX, pp. 367, 368, 513; vol. LXXIII, pp. 282, 283, 708. "The Seal Fishery Act, 1875," 38 Vict., cap. 18.)

Under the law of Uruguay the killing of seals on the Lobos and other islands "in that part of the ocean adjacent to the departments of Maldonado and Rocha" is secured to contractors, who pay to the Government a license fee and duty. (Acts of July 23, 1857, and June 28, 1858, Caraira, vol. I, pp. 440 and 448, Digest of Laws. Appendix to the Case of the United States, Vol. I, p. 448.)

By the law of Russia, the whole business of the pursuit of seals in the White Sea and Caspian Sea, both as to time and manner, is regulated, and all killing of the seals except in pursuance of such regulations is prohibited. (Code of Russian Laws Covering Rural Industries, vol. XII, part II. Appendix to the Case of the United States, Vol. I, p. 445.)

The firm and resolute recent action of the Russian Government in prohibiting in the open sea, near the Commander Islands, the same depredations upon the seal herd that are complained of by the United States in the present case, and in capturing the Canadian vessels engaged in it, is well known and will be universally approved. That Great Britain, strong and fearless to defend her rights in every quarter of the globe, will send a fleet into those waters to mount guard over the extermination of the Russian seals by the slaughter of pregnant and nursing females, is not to be reasonably expected. The world will see no war between Great Britain and Russia on that score.

The "hovering acts" of the British Parliament and of the American Congress have already been mentioned. These hovering acts were enacted in England in 1736 and in the United States in 1799, and prohibited the transhipment of goods at sea within 4 *leagues or* 12 *miles* of the coast. Fine and forfeiture were the prescribed penalties.

The English act prohibited any foreign vessel having on board tea or spirits from "hovering" within 2 *leagues or* 6 *miles* of the coast.

The American act authorized the officers of revenue cutters to board, search, examine, and remain on board of all incoming vessels, domestic or foreign, when within 4 *leagues or* 12 *miles* of the coast. (9 Geo. II, ch. 35; U. S. Rev. Stat., secs. 2760, 2867, 2868; Case of the United States, App., Vol. I, p. 493.)

The French legislation, which is in effect similar to the English and American hovering acts, has also been before alluded to.[1]

The British act in reference to vessels clearing from infected ports has also been referred to, which required all vessels coming from plague-stricken places to make signals on meeting other ships, 4 *leagues* from coast. (26 Geo. II, Ch. —.)

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[1] For the substance of these acts, as stated by M. Cresp, see Appendix, *infra*, page 189.

Another act establishes 2 leagues from the coast as the distance within which ships are amenable to the British quarantine regulations. (6 Geo. IV, ch. 78.)

Another act of the British Parliament affords a conspicuous instance of a control exercised over the high sea, for a long distance outside the utmost boundary of a littoral sea, as a means of a defense against a special danger then thought to exist. It was passed and enforced for the purpose of preventing the escape of the Emperor Napoleon when confined on the island of St. Helena.

This act authorized the seizure and condemnation of all vessels found hovering within 8 *leagues or* 24 *miles* of the coast of St. Helena during the captivity of Napoleon Bonaparte on the island, reserving to ships owned exclusively by foreigners the privilege of first being warned to depart before they could legally be seized and condemned. (56 Geo. III, Ich. 23; Case of the United States, App., vol. I, p. 495.)

A still more extensive and very recent assumption of dominion over the sea for defensive and fiscal purposes, is to be found in an act passed by the legislature of Queensland on June 24, 1879, which annexed to that country all the islands lying off the northeastern coast of Australia, within a defined limit, which at its furthest point, extends 250 miles out to sea.

The boundary thus adopted includes nearly the whole of Torres Strait, a body of water 60 miles in width, separating Australia from New Guinea, and forming the connecting link between the Pacific and Indian oceans.

Under the authority of this Annexation Act, the Government of Queensland has exercised complete police jurisdiction over the Strait, has suppressed the traffic in liquor in the objectionable form in which it formerly prevailed, and has derived from the traffic as since restricted, a large revenue through the medium of customs duties. (43 Vict., ch. 1. Rep. U. S. Fish Com. See "Gold-Gems and Pearls in Ceylon and Southern India," by A. M. & I., 1888, p. 296.) (Case of the United States, App., Vol. I, p. 467.)

An effort is made in the British counter case to diminish the force of the various statutes, regulations and decrees above cited, by the suggestions that they only take effect within the municipal jurisdiction of the countries where they are promulgated, and upon the citizens of those countries outside the territorial limits of such jurisdiction. In their strictly legal character as statutes, this is true. No authority need have been produced on that point. But the distinction has already been pointed out, which attends the operation of such enactments for such purposes. Within the territory where they prevail, and upon its subjects, they are binding as statutes, whether reasonable and necessary or not. Without, they become defensive regulations, which if they are reasonable and necessary for the defense of a national interest or right, will be submitted to by other nations, and if not, may be enforced by the government at its discretion.

Otherwise their effect would be to exclude the citizens of the country in which they are enacted from a use of the marine products it is seeking to defend, which is left open to the inhabitants of all other countries, thus leaving those products to be destroyed, but excluding their own people from sharing in the profits to be made out of the destruction. Will it be contended that such is the result that is either contemplated or allowed to take place by the governments which have found it necessary to adopt such restrictions?

It would be much more to the purpose if it could be shown either that any nation had ever protested against or challenged the validity of any of these regulations outside the territorial line, or that any individual had ever been permitted to transgress there with impunity. In the case of any of the statutes of Great Britain and her colonies that have been referred to, if any enterprising poacher, armed with an attorney and a battery of authorities on the subject of the extent of statute jurisdiction, should attempt the extermination or even the injury of the protected products, in defiance of the regulations prescribed, he would speedily ascertain, without the assistance of an international arbitration, that he had made a mistake, and that to succeed in his undertaking he would need to be backed up by a fleet too strong for Great Britain to resist.

In the light of this accumulation of authority and precedent, drawn from every source through which the sanction of international law can be derived or the general assent of mankind expressed, what more need be said in elucidation of the grounds upon which this branch of the case of the United States reposes? Have we not clearly established the proposition, that the dominion over the sea, once maintained by maritime nations, has been surrendered only so far as to permit such private use as is neither temporarily nor permanently injurious to the important and just interests of those nations, and that as against such injury, however occasioned, the right of defense has always been preserved, and has always been asserted on the high sea, and even upon foreign territory. It will be seen, we respectfully submit, that this case presents nothing new, except the particular circumstances of the application of an universal and necessary principle to an exigency that has not arisen in this precise form before.

The steadfast advance which the law of nations has made, from the days of its rudiments to the present time, and which still must continue to be made through all time, has been and must always be by the process of analogy, in the application of fundamental principles from which the rules of all new cases as they successively and constantly arise must be deduced. Neither this nor any other system of human law can stand still, for it must perish unless it keeps pace with the vicissitudes of society, and meets adequately all the new emergencies and requirements which they from time to time produce. Law has its roots in the past, but its efficacy must take place in the present. Says Mr. Phillimore (Int. Law, vol. 1, sec. 39):

> Analogy has great influence in the decision of international as well as municipal tribunals; that is to say, the application of the principle of a rule which has been adopted in certain former cases, to govern others of a similar character as yet undetermined.
>
> Analogy is the instrument of the progress and development of the law. (Bowyer's Readings, p. 88.)

If a precedent arising upon the same facts is not forthcoming, it is only because there is no precedent for the conduct complained of. The same right was never before invaded in the same way. That does not take the case out of the operation of the principle upon which all precedents in analogous incidents depend, and it applies with the same force to every case that arises within its scope. The particular precedent is created when the necessity for it appears. The absence of it when the necessity has never arisen, proves nothing. The only inquiry is whether the case comes within the general rule.

But were it possible to regard the present case as in any respect outside the scope of rules hitherto established, its determination would then be remitted to those broader considerations of moral right and justice which constitute the foundation of international law. It is the application of those cardinal principles that must control every case of new impression that can arise between nations. The law of nations has no other source than that, except in its conventionalities. Sir R. Phillimore, in Queen *v.* Kehn (*supra*, p. 68), remarks in respect to such a case:

> Too rudimental an inquiry must be avoided, but it must be remembered that the case is one of *primæ impressionis*, of the greatest importance both to England and to other states, and the character of it in some degree necessitates a reference to first principles. In the memorable answer pronounced by Montesquieu to be *réponse sans réplique*, and framed by Lord Mansfield and Sir George Lee, of the British, to the Prussian Government: "The law of nations is said to be founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage.

Chancellor Kent says (1 Commentaries, p. 32):

> As the end of the law of nations is the happiness and perfection of the general society of mankind, it enjoins upon every nation the punctual observance of benevolence and good will as well as of justice towards its neighbors. This is equally the policy and the duty of nations. * * * (p. 181). The law of nations is placed under the protection of public opinion. * * * Its great fundamental principles are founded in the maxims of eternal truth, in the immutable law of moral obligation, and in the suggestions of enlightened public interest.[1]

Many authorities on this point have been presented in a former branch of this argument. They might be multiplied to an indefinite extent, as well from continental as from English and American writers and judges. But apology should rather be offered for citing any authority at all, upon a proposition so fundamental and so obvious.

It is with the greatest respect submitted, and in our judgment it can not be too clearly kept in view, that the duty requested of this High Tribunal is not the discussion of abstract theories, nor the establishment of propositions applicable to cases not before it, nor the determination of diplomatic controversies that have long ceased to be material. The question, and the only question to be decided, is whether the owners of the Canadian vessels engaged in the destruction of the seals in Bering Sea, have an indefeasible right as against the Government of the United States, upon the circumstances of this case, to continue such destruction, at the times, in the places, in the manner, and with the consequences shown by the evidence. That question is neither technical nor scholastic, nor does it depend upon finespun reasoning or recondite learning. It is to be regarded in the large and fair-minded view which accords with the dignity of the parties to this controversy, the character of the Tribunal to which they have submitted it, and a just deference to that opinion of civilized mankind which is the ultimate criterion of international law, and the final arbitrator in all international disputes. Surveyed in this light, upon its just and actual facts, and looking at it as it stands apparent to the world, what are its proposals, when fairly and simply stated? Let the leading facts before stated, be recapitulated.

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[1] Says Judge Story (Con. of Laws, sec. 3): "In resting on the basis of general convenience and the enlarged sense of national duty, rules have from time to time been promulgated by jurists and supported by courts of justice by a course of judicial reasoning which has commanded almost universal confidence, respect, and obedience, without the aid either of municipal statutes or of royal ordinances, or of international treaties."

Mr. Twiss (Int. Law, part 1, sec. 86), divides the sources of law of nations as follows "The natural or necessary law of nations, in which the principles of natural justice are applied to the intercourse between states; secondly, customary law of nations which embodies those usages which the continued habit of nations has sanctioned for their mutual interest and convenience, and thirdly, the *conventional* or *diplomatic* law of nations. * * * Under this last head many regulations will now be found which at first resulted from custom or a general sense of justice."

Mr. Amos, in his note to Manning (book 2, chap. 1, p. 85) remarks: "Though the customary usages of states in their mutual intercourse must always be held to afford evidence of implied assent, and to continue to be a mean basis of a structure of the law of nations, yet there are several circumstances in modern society which seem to indicate that the region of the influence will become increasingly restricted as compared with that of the influence of well-ascertained ethical principles and formal convention."

Here is a herd of amphibious animals, half human in their intelligence, valuable to mankind, almost the last of their species, which from time immemorial have established their home with a constant *animus revertendi* on islands once so remote from the footsteps of man, that these, their only denizens, might reasonably have been expected to be permitted to exist, and to continue the usefulness for which the beneficence of the Creator designed them. Upon these islands their young are begotten, brought forth, nurtured during the early months of their lives, the land being absolutely necessary to these processes, and no other land having ever been sought by them, if any other is in fact available, which is gravely to be doubted.

The Russian and United States Governments, successively proprietors of the islands, have by wise and careful supervision cherished and protected this herd, and have built up from its product a permanent business and industry valuable to themselves and to the world, and a large source of public revenue, and which at the same time preserves the animal from extinction, or from any interference inconsistent with the dictates of humanity.

It is now proposed by individual citizens of another country, to lie in wait for these animals on the adjacent sea during the season of reproduction, and to destroy the pregnant females on their way to the islands, the nursing mothers after delivery while temporarily off the islands in pursuit of food, and thereby the young left there to starve after the mothers have been slaughtered; the unavoidable result being the extermination of the whole race, and the destruction of the valuable interests therein of the United States Government and of mankind; and the only object being the small, uncertain, and temporary profits to be derived while the process of destruction lasts, by the individuals concerned.

And it is this conduct, inhuman and barbarous beyond the power of description, criminal by the laws of the United States and of every civilized country so far as its municipal jurisdiction extends, in respect to any wild animal useful to man or even ministering to his harmless pleasure, that is insisted upon as a part of the sacred right of the freedom of the sea, which no nation can repress or defend against, whatever its necessity. Can anything be added to the statement of this proposition that is necessary to its refutation?

What precedent for it, ever tolerated by any nation of the earth, is produced? From what writer, judge, jurist, or treaty is authority to be derived for the assertion that the high sea is or ever has been free for such conduct as this, or that any such construction was ever before given to the term "freedom of the sea" as to throw it open to the destruction, for the profit of individuals, of valuable national interests of any description whatever? Let those who claim to set up such a right as justified by any known law of nations, produce the authority of the precedent to establish it.

If this proposal were submitted to the enlightened judgment of mankind, if the question of its acceptance were made to depend upon those considerations of justice, morality, humanity, benevolence, and fair dealing, that, as we have seen, form the groundwork of international law, and of all usages under it that have become established, it can not be open to doubt what the answer to it must be. There can be but one side to such an inquiry, if ideas of right and wrong, or even of sound policy, are to prevail. To escape that result, some arbitrary and inflexible rule of controlling law must be discovered, against which justice, morality, and fair dealing are powerless. We deny that any such rule forms a part, or can ever be permitted to form a part, of any recognized system of international law.

Many cases may be supposed, each of which, should it arise, would be in its particular facts a new case, in illustration of the proposition for which we contend. Suppose that some method of explosive destruction should be discovered by which vessels on the seas adjacent to the Newfoundland coast outside of the jurisdictional line could, with profit to themselves, destroy all the fish that resort to those coasts, and so put an end to the whole fishing industry upon which their inhabitants so largely depend. Would this be a business that would be held justifiable as a part of the freedom of the sea? although the fish are admitted to be purely *feræ naturæ*, and the general right of fishing in the open sea outside of certain limits is not denied.

An Atlantic cable has been laid between America and Great Britain, the operation of which is important to those countries and to the world. Suppose some method of deep-sea fishing or marine exploration should be invented, profitable to those engaged in it, but which should interrupt the operation of the cable and perhaps endanger its existence. Would those nations be powerless to defend themselves against such consequences, because the act is perpetrated upon the high sea?

Suppose vessels belonging to citizens of one country to be engaged in transporting for hire across the sea to ports of another, emigrants from plague-stricken and infected places, thus carrying into those ports a destructive contagion. If it should be found that measures of defense inside of the three-mile or cannon-shot lines were totally inadequate and ineffectual, would the nation thus assailed be deprived of the power of defending itself against the approach of such vessels, as far outside that line as the actual necessity of the case might require? This question is answered by the acts of the British Parliament before referred to, applicable to just such a case.

If a light-house were erected by a nation in waters outside of the three-mile line, for the benefit of its own commerce and that of the world, if some pursuit for gain on the adjacent high sea should be discovered which would obscure the light or endanger the light-house or the lives of its inmates, would that government be defenseless? Lord Chief Justice Cockburn answers this inquiry in the case of Queen *v.* Kehn above cited (p. 198) when he declares that such encroachments upon the high sea would form a part of the defense of a country, and "come within the principle that a nation may do what is necessary for the protection of its own territory."

In any of these cases, would it be necessary for the nation assailed to supplicate the government to which its assailants belonged, to prevent the mischief complained of, as a matter of voluntary comity, and if such application were disregarded, to submit? The whole history of the maritime world, and of Great Britain above all other countries is to the contrary. So far from individual rights on the sea of such a mischievous and injurious character having become recognized and established by the assent of mankind, so as to be regarded as justified by the international law that results from such an assent, the judgment and the conduct of nations have been altogether the other way, and necessarily must always be the other way if they are to protect themselves, their interests, and their people from destruction.

It will be seen from the correspondence between the governments of Great Britain and the United States, printed in the Appendix to the Case of the United States, that a convention between the two countries was virtually agreed upon as early as 1887, with the full concurrence of Russia, under which pelagic sealing in Behring Sea would have been prohibited between April 15 and October 1 or November 1 in each year, and that the consummation of this agreement was only prevented by the refusal of the Canadian Government to assent to it. The propriety and necessity of such a repression was not doubted, either by the United States, Great Britain, or Russia. This convention, if completed, would have fallen far short both of the just right and the necessity of the United States in respect of the protection of the seals, as is now made apparent in the light of the much larger knowledge of the subject which has since been obtained. Still, it would have been a step toward the desired end.

When it became apparent that Great Britain would be unable to consummate the proposed agreement, and that no restraint would be put by Her Majesty's Government on the depredations of its colonists complained of, if the United States Government had then taken the course which has since been pursued by the Government of Russia in respect to the seals on the Commander Islands, and refused to permit further slaughter of the seals in Bering Sea during the breeding time, what is it reasonable to believe would have been the judgment of the civilized world, as to the justice and propriety of the position thus assumed? Would not such action have been approved and acquiesced in by all nations, as it has been shown that similar action by many countries in all similar cases that have arisen have been approved and acquiesced in? And if it can be supposed, as it certainly can not be supposed without casting an unwarrantable aspersion upon Her Majesty's Government, that Great Britain would have undertaken to maintain by naval force the Canadian vessels in the conduct in question, how far is it to be believed that she would have been sustained by the general opinion of the world? More especially in view of the claim she has always successfully and justly asserted, of the right to protect all interests of her own against injury by individuals on the high sea for the sake of gain.

And finally, if by the concurrent action of the United States, Great Britain, and Russia, a prohibition of pelagic sealing during the breeding time had been effected, as proposed, would those three powers combined have had a better right to exclude any casual poacher under the flag of some other government from the depredations prohibited, than the United States now has, standing alone? Or would they have been constrained, by the requirements of what is called international law, to occupy the humiliating position of standing idly by, while the interests they had found it necessary to unite in protecting, should be deliberately destroyed for the benefit of a few adventurers, whose methods defied law and disgraced humanity.

What the United States Government would have been justified in doing in self-defense, by the exertion of such reasonable force as might be necessary, is precisely what she has a right to ask in the judgment of this Tribunal. There can not be one system of international law for the world and another for the closet, because the closet does not prescribe the law of nations; it derives it from those principles of right and justice which are adopted as a rule of action by the general assent and approval of mankind.

Instead of taking its defence into its own hands, the Government of the United States has refrained from the exercise of that right, has submitted itself to the judgment of this Tribunal, and has agreed to abide the result. Its controversy is only nominally with Great Britain, whose sentiment and whose interest concur in this matter with those of the United States. It is really with a province of Great Britain, not amenable to her control, with which the United States Government has no diplomatic relations, and can not deal independently. Although the erroneous assumption that the United States claimed the right to make Bering Sea a *mare clausum*, has undoubtedly drawn Her Majesty's Government into a position in this dispute that it might not otherwise have taken.

If by the judgment of this high and distinguished Tribunal the Alaskan seal herd is sentenced to be exterminated, a result which the United States Government has been unable to anticipate, it must submit, because it has so agreed. But it will not the less regret having thus bartered away that plain right of self-defense against unwarranted injury, which no nation strong enough to assert itself has ever surrendered before.

E. J. PHELPS.

# APPENDIX TO PART THIRD, DIVISION II (MR. PHELPS'S ARGUMENT).

## ADDITIONAL AUTHORITIES ON THE QUESTION OF PROPERTY.

[NOTE 1, PAGE 132. OPINION IN HANNAM *vs.* MOCKETT. (2 BARNWALL AND CRESWELL, 943.)]

BAGLEY, J. A man's rights are the rights of personal security, personal liberty, and private property. Private property is either property in possession, property in action, or property that an individual has a special right to acquire. The injury in this case does not affect any right of personal security or personal liberty, nor any property in possession or in action, and the question then is whether there is any injury to any property the plaintiff had a special right to acquire.

A man in trade has a right in his fair chances of profit, and he gives up time and capital to acquire it. It is for the good of the public that he should. But, has it ever been held that a man has a right in the chance of obtaining animals *feræ naturæ*, where he is at no expense in enticing them to his premises, and where it may be at least questionable whether they will be of any service to him, and whether, indeed, they will not be a nuisance to the neighborhood? This is not a claim *propter impotentiam* because they are young, *propter solum* because they are on the plaintiff's land, or *propter industriam* because the plaintiff has brought them to the place or reclaimed them, but *propter usum et consuetudinem* of the birds.

They, of their own choice, and without any expenditure or trouble on his part, have a predilection for his trees, and are disposed to resort to them. But, has he a legal right to insist that they shall be permitted to do so? Allow the right as to these birds, and how can it be denied as to all others? In considering a claim of this kind the nature and properties of the birds are not immaterial. The law makes a distinction between animals fitted for food and those which are not; between those which are destructive of private property and those which are not; between those which have received protection by common law or by statute and those which have not.

It is not alleged in this declaration that these rooks were fit for food; and we know in fact that they are not generally so used. So far from being protected by law, they have been looked upon by the legislature as destructive in their nature, and as nuisances to the neighborhood where they are established. Keeble *vs.* Hickeringill (11 East, 574) bears a stronger resemblance to the present than any other case, but it is distinguishable. * * * But in the first place, it is observable that wild fowl are protected by the statute 25 H. 8, c. 11; that they constitute a known article of food; and that a person keeping up a decoy expends money and employs skill in taking that which is of use to the public.

It is a profitable mode of employing his land, and was considered by Lord Holt as a description of trade. That case, therefore, stands on a different foundation from this. All the other instances which were referred to in the argument on the part of the plaintiff are cases of animals specially protected by acts of Parliament, or which are clearly the subjects of property. Thus hawks, falcons, swans, partridges, pheasants, pigeons, wild ducks, mallards, teals, widgeons, wild geese, black game, red game, bustards, and herons are all recognized by different statutes as entitled to protection, and consequently in the eye of the law are fit to be preserved.

[KEEBLE *vs.* HICKERINGILL. HILARY TERM 5 ANNE, HOLT'S REPORTS, p. 17.]

Action by owner of a decoy pond, frequented by wild fowl, against one who shot off a gun near his pond to the plaintiff's loss, etc.

During the course of the discussion by the judges, Holt, C. J., said: * * * "And the decoys spoil gentlemen's game, yet they are not unlawful, for they bring money into the country. Dove cotes are lawful to keep pigeons."

Powell: The declaration is not good, but this being a special action on the case, it is helped by the verdict. If you frighten pigeons from my dove cote, is not that actionable?

Montague: Yes, for they have *animum revertendi*, and therefore you have property.

In Vol. II, East's Reports, p. 571, is the case of Carrington *vs.* Taylor, which is also a case upon the subject of injury to the owner of a decoy pond. The reporter, in a note to this case, reports at length Keeble *vs.* Hickeringill, which he states "is taken from a copy of Lord C. J. Holt's own MSS. in my possession."

In this report it is said: "Holt, C. J. I am of opinion that this action doth lie. It seems to be new in its instance, but it is not new in the reason or principle of it. * * * And we do know that of long time in the kingdom these artificial contrivances of decoy ponds and decoy ducks have been used for enticing into those ponds wild fowl, in order to be taken for the profit of the owner of the pond, who is at the expense of servants, engines, and other management, whereby the markets of the nation may be furnished; there is great reason to give encouragement thereunto; that the people who are so instrumental by their skill and industry so to furnish the markets should reap the benefit and have their action."

[NOTE 1, (PAGE 149). EXTRACT FROM OPINION OF CHIEF JUSTICE MARSHALL IN CHURCH *vs.* HUBBART, 2 CR., 187.]

That the law of nations prohibits the exercise of any act of authority over a vessel in the situation of the *Aurora*, and that this seizure is, on that account, a mere maritime trespass not within the exception, cannot be admitted. To reason from the extent of the protection a nation will afford to foreigners, to the extent of the means it may use for its own security, does not seem to be perfectly correct. It is opposed by principles which are universally acknowledged. The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory.

Upon this principle, the right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted, because the belligerent has a right to prevent the injury done to himself by the assistance intended for his enemy. So, too, a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right is an injury to itself which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.

In different seas and on different coasts a wider or more contracted range in which to exercise the vigilance of the Government will be assented to. Thus in the Channel, where a very great part of the commerce to and from all the north of Europe passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the Government may be extended somewhat further, and foreign nations submit to such regulations as are reasonable in themselves, and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions.

If this right be extended too far, the exercise of it will be resisted. It has occasioned long and frequent contests which have sometimes ended in open war. The English, it will be well recollected, complained of the right claimed by Spain to search their vessels on the high seas, which was carried so far that the Guarda Costas of that nation seized vessels not in the neighborhood of their coasts. This practice was the subject of long and fruitless negotiations, and at length of open war. The right of the Spaniards was supposed to be exercised unreasonably and vexatiously, but it never was contended that it could only be exercised within the range of the cannon from their batteries.

Indeed, the right given to our own revenue cutters to visit vessels four leagues from our coasts is a declaration that in the opinion of the American Government no such principle as that contended for has a real existence. Nothing, then, is to be drawn from the laws of the usages of nations, which gives to this part of the contract before the court the very limited construction which the plaintiff insists on, or which proves that the seizure of the *Aurora* by the Portuguese governor was an act of lawless violence.

[NOTE 1, PAGE 150. OPINION OF JUDGE JOHNSON IN ROSE *vs.* HIMELY, 4 CR. 241.]

I am of opinion that the evidence before us plainly makes out a case of belligerent capture, and though not so, that the capture may be justified, although for the breach of a municipal law. In support of my latter position, both principle and the practice of Great Britain and our own Government may be appealed to. The ocean is the common jurisdiction of all sovereign powers; from which it does not result that their powers upon the ocean exist in a state of suspension or equipoise, but that every power is at liberty upon the ocean to exercise its sovereign right, provided it does not act inconsistent with that general equality of nations which exists upon the ocean.

The seizure of a ship upon the high seas, after she has committed an act of forfeiture within a territory is not inconsistent with the sovereign rights of the nation to which she belongs, because it is the law of reason and the general understanding of nations that the offending individual forfeits his claim to protection, and every nation is the legal avenger of its own wrongs. Within their jurisdictional limits the rights of sovereignty are exclusive; upon the ocean they are concurrent. Whatever the great principle of self-defense in its reasonable and necessary exercise will sanction in an individual in a state of nature, nations may lawfully perform upon the ocean. This principle, as well as most others, may be carried to an unreasonable extent; it may be made the pretence instead of the real ground of aggression, and then it will become a just cause of war. I contend only for its reasonable exercise.

The act of Great Britain of 24 Geo., 3, Chap. 47, is predicated upon these principles. It subjects vessels to seizure which approach with certain cargoes on board within the distance of four leagues of her coast, because it would be difficult, if not impossible, to execute her trade laws if they were suffered to approach nearer in the prosecution of an illicit design; but if they have been within that distance, they are afterwards subject to be seized on the high seas. They have then violated her laws, and have forfeited the protection of their sovereign. The laws of the United States upon the subject of trade appear to have been framed in some measure after the model of the English statutes; and the twenty-ninth section of the act of 1799 expressly authorizes the seizure of a vessel that has within the jurisdiction of the United States committed an act of forfeiture, wherever she may be met with by a revenue cutter, without limiting the distance from the coast.

So also the act of 1806, for prohibiting the importation of slaves, authorizes a seizure beyond our jurisdictional limits, if the vessel be found with slaves on board, hovering on the coast; a latitude of expression that can only be limited by circumstances, and the discretion of a court, and in case of fresh pursuit would be actually without limitation. Indeed, after passing the jurisdictional limits of a State, a vessel is as much on the high seas as if in the middle of the ocean, and if France could authorize a seizure at the distance of 2 leagues, she could at the distance of 20. * * * Seizure on the high seas for a breach of the right of blockade during the whole return voyage, is universally acquiesced in as reasonable exercise of sovereign power. The principle of blockade has, indeed, in modern times, been pushed to such an extravagant extent as to become a very justifiable cause of war, but still it is admitted to be consistent with the law of nations when confined within the limits of reason and necessity.

[NOTE 1 (PAGE 152). CITATIONS FROM CONTINENTAL WRITERS ON THE SUBJECT OF SELF DEFENSE.]

Every nation may appropriate things, the use of which, if left free and common, would be greatly to its prejudice. This is another reason why maritime powers may extend their domain along the seacoast, as far as it is possible, to defend their rights. * * * It is essential to their security and the welfare of their dominions. (Azuni, Part I, Chap. II, Art I, Sec. 4, page 185.)

Plocque (De la Mer et de la Navigation Maritime, ch. I, pp. 6–8), after discussing the limits of the territorial sea, and pointing out the great divergence of opinion that had existed on that point, remarks:

"Moreover, in custom-house matters, a nation can fix at will the point where its territorial sea ends; the neighboring nations are supposed to be acquainted with these regulations, and are, consequently, obliged to conform thereto. As an example, we will content ourselves with quoting the law of Germinal 4th, year II, Art. 7, Tit. 2: 'Captains and officers and other functionaries directing the custom-house, or the commercial or naval service, may search all vessels of less than 100 tons burden when lying at anchor or tacking within four leagues from the coast of France, cases of *vis major* excepted. If such vessels have on board any goods whose importation or exportation is prohibited in France, the vessels shall be confiscated as well as their cargoes, and the captains of the vessels shall be required to pay a fine of 500 livres.'"

Says Pradier-Fodéré (Traité de Droit Internationale, Vol. II, sec. 633): "Independently of treaties, the law of each state can determine of its own accord a certain distance on the sea, within which the state can claim to exercise power and jurisdiction, and which constitutes the territorial sea, for it and for those who admit the limitation. This is especially for the surveillance and control of revenues."

And in a note to this passage he says:

"In effect, in the matter of revenue, a nation can fix its own limits, notwithstanding the termination of the territorial sea. Neighboring nations are held to recognize these rules, and in consequence are considered to conform to them. On this point the French law of the 4th Germinal, year II, can be cited."

This law fixes two myriameters, or about twelve English miles as the limit within which vessels are subject to inspection to prevent fraud on the revenue.

La Tour (De la mer territoriale, page 230), speaking of the exterritorial effect of the French revenue laws at four leagues from the coast, thus justifies them.

"Is not this an excessive limit to which to extend the territorial sea? No, we assert. At the present day this question will hardly bear discussion, on account of the long range of cannon; and though we should return to the time when that range was less, we should still undertake to justify this extension of the custom-house radius; and for this it is sufficient to invoke the reasons given in matters of sanitary police. It does not involve simply a reciprocal concession of states, or a tacit agreement between them, but it is the exercise of their respective rights. * * *

"The American and English practice allows the seizure, even outside of the ordinary limit of the territorial waters, of vessels violating the custom laws."

Says M. Calvo (Le droit international, sec. 244):

"In order to decide the question in a manner at once rational and practical, it should not be lost sight of at the outset that the state has not over the territorial sea a right of property, but a right of inspection and of jurisdiction in the interest of its own safety, or of the protection of its revenue interests.

"The nature of things demonstrates, then, that the right extends up to that point where its existence justifies itself, and that it ceases when the apprehension of serious danger, practical utility, and the possibility of effectively carrying on definite action cease.

"Maritime states have an incontestible right, however, for the defense of their respective territories against sudden attack, and for the protection of their interests of commerce and of revenues, to establish an active inspection on their coast and its vicinity, and to adopt all necessary measures for shutting off access to their territory to those whom they may refuse to receive, where they do not conform to established regulations. It is a natural consequence of the general principle, that whatever anyone shall have done in behalf of his self-defense he will be taken to have done rightly.

"Every nation is thus free to establish an inspection and a police over its coasts as it pleases, at least where it has not bound itself by treaties. It can, according to the particular conditions of the coasts and waters, fix the distance correspondingly. A common usage has established a cannon shot as the distance which it is not permitted to overleap, except in the exceptional case, a line which has not alone received the approval of Grotius, Bynkershök, Galiana, and Kluber, but has been confirmed likewise by the laws and treaties of many of the nations.

"Nevertheless we can maintain further with Vattel that the dominion of the state over the neighboring sea extends as far as it is necessary to insure its safety, and as far as it can make its power respected. And we can further regard with Rayneval the distance of the horizon which can be fixed upon the coast as the extreme limit of the measure of surveillance. The line of the cannon shot, which is generally regarded as of common right, presents no invariable base, and the line can be fixed by the laws of each state at least in a provisional way." (Heffter, Int. Law, Secs. 74–75.)

Bluntschli says (Int. Law, Book IV, sec. 322):

"The jurisdiction of the neighboring sea does not extend further than the limit judged necessary by the police and the military authorities."

And section 342:

"Whenever the crew of a ship has committed a crime upon land or within water included in the territory of another state and is pursued by judicial authorities of such state, the pursuit of the vessel may be continued beyond the waters which are a part of the territory, and even into the open sea."

And in a note he says:

"This extension is necessary to insure the efficiency of penal justice. It ends with the pursuit."

Carnazza-Amari (Int. Law, sec. 2, chap. 7, page 60), after citing from M. Calvo the passage quoted above says:

"Nevertheless states have a right to exact that their security should not be jeopardized by an easy access of foreign vessels menacing their territory; they may see to the collection of duties indispensable to their existence, which are levied upon the national and foreign produce, and which maritime contraband would doubtless lessen if it should not be suppressed. From all these points of view it is necessary to grant to each nation the right of inspection over the sea which washes its coasts, within the limits required for its security, its tranquillity, and the protection of its wealth. * * * States are obliged, in the interest of their defense and their existence, to subject to their authority the sea bordering the coast as far as they are able, or as far as there is need to maintain their dominion by force of arms. * * *

"It is necessary to concede to every nation a right of surveillance over the bordering sea within the limits which its security, its tranquillity, and its wealth demand. * * * Balde and other authorities place the line at 60 miles from the shore. Gryphiander and Pacuinez, at 100. Locennius, at a point from which a ship can sail in two days. Bynkershöck maintains that the territorial sea extends as far as the power of artillery. This limit is regarded as the correct one, not because it is founded on force, but because it is the limit necessary for the safety of the state."

[NOTE 1, PAGE 153. THE CAROLINE CASE.]

Mr. Webster said, addressing the British Government:

"Under those circumstances, and under those immediately connected with the transaction itself, it will be for Her Majesty's Government to show upon what state of facts and what rules of international law the destruction of the *Caroline* is to be defended. It will be for that Government to show a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation.

"It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the *Caroline* was impracticable, or would have been unavailing." (Webster's Works, Vol. VI, page 261.)

Lord Ashburton in his reply says:

"Every consideration, therefore, leads us to set as highly as your Government can possibly do this paramount obligation of reciprocal respect for the independent territory of each. But however strong his duty may be, it is admitted by all writers, by all jurists, by the occasional practice of all nations, not excepting your own, that a strong overpowering necessity may arise when this great principle may and must be suspended. It must be so, for the shortest possible period during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self-defense is the first law of our nature, and it must be recognized by every code which professes to regulate the condition and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed; and on this part of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

"Agreeing, therefore, on the general principle, and on the possible exception to which it is liable, the only question between us is whether this occurrence came within the limits fairly to be assigned to such exceptions; whether, to use your words, there was that necessity of self-defense, instant, overwhelming, leaving no choice of means, which preceded the destruction of the *Caroline* while moored to the shore of the United States. Give me leave, sir, to say, with all possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country, suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint, and perhaps these transactions have generally been in late times too much overlooked or connived at.

"But the case we are considering is of a wholly different description, and may be best determined by answering the following question: Supposing a man standing on ground where you have no legal right to follow him, has a weapon long enough to reach you, and is striking you down and endangering your life, how long are you bound to wait for the assistance of the authority having the legal power to relieve you? Or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you, and are actually destroying life and property by their fire; if you have remonstrated for some time without effect and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so than by seizing your assailant on the verge of neutral territory?" (British and Foreign Correspondence for 1841, 1842, Vol. 30, page 196.)

Lord Campbell says of this case in his autobiography (Life, etc., edited by Mrs. Hardcastle, 1881, Vol. 2, p. 118):

"The affair of the *Caroline* was much more difficult. Even Lord Grey told me he thought we were quite wrong in what we had done; but assuming the facts that the *Caroline* had been engaged and when seized by us was still engaged in carrying supplies and military stores from the American side of the river to the rebels in Navy Island, part of the British territory, that this was permitted or could not be prevented by the American authorities, I was clearly of opinion that although she lay on the American side of the river when she was seized, we had a clear right to seize and to destroy her, just as we might have taken a battery erected by the rebels on the American shore, the guns of which were fired against the Queen's troops in Navy Island. I wrote a long justification of our Government, and this supplied the arguments used by our foreign secretary, till the Ashburton treaty hushed up the dispute."

Mr. Calhoun said of it in a speech in the Senate in which he insisted that the capture of the *Caroline* in American waters was unjustifiable, because unnecessary:

"It is a fundamental principle in the law of nations that every state or nation has full and complete jurisdiction over its own territory to the exclusion of all others, a principle essential to independence, and therefore held most sacred. It is accordingly laid down by all writers on those laws who treat of the subject that nothing short of extreme necessity can justify a belligerent in entering with an armed force on the territory of a neutral power, and when entered, in doing any act which is not forced on him by the like necessity which justified the entering."

### [NOTE 1 (PAGE 156). NEGOTIATION BETWEEN UNITED STATES AND GREAT BRITAIN RELATIVE TO THE NEWFOUNDLAND FISHERIES.]

Mr. Adams says (documents relating to the negotiations of Ghent, page 184):

"That fishery, covering the bottom of the banks which surround the island of Newfoundland, the coasts of New England, Nova Scotia, the Gulfs of St. Lawrence and Labrador, furnishes the richest treasure and the most beneficent tribute the ocean pays to earth on this terraqueous globe. By the pleasure of the Creator of earths and seas, it has been constituted in its physical nature one fishery, extending in the open seas around that island to little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself into all the bays, creeks, and harbors to the very borders of the shores. For the full enjoyment of an equal share in this fishery it was necessary to have a nearly general access to every part of it. * * *

"By the law of nature this fishery belonged to the inhabitants of the regions in the neighborhood of which it was situated. By the conventional law of Europe it belonged to the European nations which had formed settlements in those regions. France, as the first principal settler in them, had long claimed exclusive right to it. Great Britain, moved in no small degree by the value of the fishery itself, had made the conquest of all those regions from France (by force), and had limited, by treaty, within a narrow compass the right of France to any share in the fishery. Spain, upon some claim of prior discovery, had for some time enjoyed a share of the fishery on the banks, but at the last treaty of peace prior to the American Revolution had expressly renounced it. At the commencement of the American Revolution, therefore, this fishery belonged exclusively to the *British Nation*, subject to a certain limited participation in it reserved by treaty stipulations to France."

He further cites (page 185) an act of the British Parliament passed in March, 1775:

"In March, 1775, the British Parliament passed an act to restrain the trade and commerce of the provinces of Massachusetts Bay and New Hampshire, and colonies of Connecticut and Rhode Island, and Providence Plantation in North America, to Great Britain, Ireland, and the British Islands in the West Indies, and to prohibit such provinces and colonies from carrying on any fishery on the banks of Newfoundland and other places therein mentioned, under certain conditions and limitations."

And the remarks of Lord North in bringing in the bill:

"In particular he said that the fishery on the banks of Newfoundland and the other banks and all the others in America was the undoubted right of Great Britain; *therefore we might dispose of them as we pleased.*"

Mr. Adams again observes (page 187):

"The whole *fishery* (with the exception of the reserved and limited right of France) was the *exclusive property* of the British Empire. The right to a full participation in that property belonged by the law of nature to the people of New England from their locality."

And in support of the validity of this proprietary right, he quotes (page 107) the passage from Vattel heretofore cited. (Vattel, 1 Ch., 23.)

He cites also (page 169) from Valin (Vol. 2, page 693) in respect to these fisheries as follows:

"As to the right of fishing upon the bank of Newfoundland, as that island which is as it were the seat of this fishery then belonged to France, it was so held by the French that other nations could naturally fish there only by virtue of the treaties. This has since changed by means of the cession of the island of Newfoundland made to the English by the treaty of Utrecht; but Louis XIV, at the time of that cession, made an express reservation of the right of fishing upon the bank of Newfoundland, in favor of the French as before."

And Mr. Adams quotes (page 169) from Mr. Jefferson's Report on the Fisheries, of February 1, 1791, as follows:

"Spain had formally relinquished her pretensions to a participation in these fisheries at the close of the preceding war, and at the end of this, the adjacent continent and islands being divided between the United States and the English and French, for the last retained two small islands merely for this object, the right of fishing was appropriated to them also."

And he quotes also (pages 189, 190) the language of Lord North and Lord Loughborough in the debate in Parliament on the treaty of 1763, in which the concession to the Americans in that treaty of rights of fishing was treated as an improvident and unnecessary concession.

[NOTE 1, PAGE 169. FRENCH LEGISLATION FOR REVENUE PROTECTION.]

Law or decree of August 6, 1791, Title III, Article I: "All goods prohibited admission which may be entered by sea or by land shall be confiscated as well as the ships under fifty tons, etc."

Article II: "All prohibited goods shall be accounted for according to the terms of the above article, * * * which the revenue officers shall have found within the two leagues of the coasts on vessels under fifty tons."

Title 13 of the police in general, article 6: "The inspection of the vessels, tenders, or of the sloops, can take place at sea or on the rivers."

Article VII: "The officers of inspections on the said tenders can visit the vessels under fifty tons which may be found at sea at the distance of two leagues from the coast, and to receive the bills of lading concerning their cargo. If these vessels are loaded with prohibitive goods the seizure of the same shall be made, and confiscation shall be pronounced against the master of the vessel with a penalty of five hundred pounds."

Law or decree of the 4th Germinal, year 2d, March 24, 1794, relating to maritime commerce and revenue:

Title II, article 3: "The captain arriving within the four miles of the coast will submit when required, a copy of the manifest to the custom-house official who will come on board, and will visé the original."

Article 7: "The captain and the other officers on the revenue vessels may visit all ships under one hundred tons which are at anchor or luffing within the four leagues of the coasts of France, excepting they be of superior strength. If the ships have on board goods of which the import into and export from France is prohibited, they shall be confiscated, as well as the cargoes, together with a fine of five hundred pounds against the captains of the ships."

Provisions confirmed by the following laws:

Law of March 27, 1817, article 13: "The same penalty shall be applied in the case provided by article 7 of law of the 4th Germinal, year 2, Title II, to ships under one hundred tons overtaken, except they be of superior strength, within the two myriameters (four leagues) of the coasts, having on board forbidden merchandise."

## FOURTH.

### CONCURRENT REGULATIONS.

The five questions which, in the order adopted by the Treaty, are first submitted to the Tribunal of Arbitration, may for practical purposes be reduced to two; and these present for consideration the two general grounds upon which, in the contemplation of the Treaty, the United States might assert a right to prevent the pursuit and capture of the Alaskan fur-seals on the high seas. The *first* is the possession by the United States of a jurisdiction or right to exercise authority in Bering Sea sufficient to enable it to protect their sealing industries against injury from the prosecution of pelagic sealing by the vessels of any nation. The *second* is the property right or interest in the seal herd, or in the industry of cherishing and cultivating that herd on the Pribilof Islands, and taking the annual increase for the purpose of supplying the world's demand. The treaty apparently assumes that a determination in favor of the United States of the question of jurisdiction in Bering Sea *might* amount to a final disposition of the whole substance of the controversy; but it is cautious in this particular, and, having in view the extreme importance of preserving the seals from threatened extermination, contemplates that even in the event of such favorable decision the United States might not be able, by any exercise of the powers thus conceded to them, to insure this preservation; but that regulations to be adopted by the concurrent action of both nations might be necessary; and this contemplated possibility is not, in the view of the Treaty, displaced by any determination which may be reached upon the question of property.

The seventh article, therefore, broadly provides that:

> If the determination of the foregoing questions *as to the exclusive jurisdiction of the United States* shall *leave the subject in such position* that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective governments are necessary, and over what waters such regulations should extend, etc., etc.

The reasons for leaving the consideration of concurrent regulations thus broadly open are manifest. In all judicial controversies, except such as plainly involve nothing more than the question of the right to a money payment, the particular relief which may be best suited to the exigency of the case can never be accurately perceived until all the rights, both principal and incidental, are ascertained; and, consequently, the character and extent of the relief are left to be determined along with, or subsequent to, the determination of the merits of the case. This was especially true of the present controversy in the form which it assumed at the time of the Treaty. The questions at that time had received a diplomatic treatment only. This disclosed that several novel legal questions were involved concerning which the high contracting parties were not agreed. But they were agreed that, whatever might be the true solution of such questions, there was one object extremely desirable to both, namely, that the fur-seals should be preserved from the peril of extermination. If it were determined that the United States had no property interest in the seals, and no exclusive jurisdiction in Bering Sea, concurrent regulations would certainly be necessary. And if it were determined that they had no property interest, but had the exclusive jurisdiction, it might yet be that the inadequacy of a protection, however efficiently exerted, which would be limited to these waters, would still render concurrent regulations necessary to complete protection. And, even if it were determined that they had both the requisite jurisdiction and the property interest, there might be a question concerning the action which they might take to protect such interest in the Pacific Ocean, south of Bering Sea. Satisfactory conclusions upon all these questions could only be had by an attentive examination, aided by a full production of proofs, not only of the questions of right, but also of the whole subject of sealing, and of the practical measures which might be requisite to assure the protection which both parties agreed to be supremely desirable. The single event which appears to have been regarded as *possibly* rendering it unnecessary to consider the question of concurrent regulations was a determination that the United States possessed the exclusive jurisdiction in or over some part of Bering Sea. A protection enforced by the United States in the exercise of such an authority *might* be sufficiently effective for the agreed purpose of preservation, and render any concurrent action on the part of Great Britain unnecessary; but this was uncertain. Hence the language of the Treaty, carefully shaped so as not to attempt anticipations which might be disappointed, made it the duty of the Tribunal, "if the determination of the foregoing questions as to the exclusive jurisdiction of the United States *shall leave the subject in such a position* that the concurrence of Great Britain is necessary to the establishment of regulations," etc., to proceed and "determine what concurrent regulations outside the jurisdictional limits of the respective Governments are necessary," etc.

The first question which arises here is, what is the scope of the inquiry which the Tribunal is called upon to make? Is it to determine what regulations *consistent with the pursuit of pelagic sealing* are necessary? Is it thus, or in any other way, limited in its inquiry? It may be urged that we are at liberty to look into the diplomatic communications which preceded the treaty and led to it, with the view of more clearly ascertaining what the precise intent in this and other respects was, and that, when these are taken into view, it appears that all that the United States claimed was that the operations of the Canadian sealers should be placed under restrictions, such as those afforded by a close time and prohibited areas.

It is freely admitted that when suggestions were first made for the settlement of questions growing out of the depredations of the Canadian sealers and the seizures of vessels employed for that purpose, it was believed by the United States that the substantial enjoyment by them of the rights acquired by their acquisition of Alaska from Russia might be secured, and the herds of seals protected sufficiently for that purpose by some scheme of restriction in place or time, or both, of pelagic sealing. And it is believed that the Government of Great Britain at the same time supposed that such restrictions would suffice for the preservation of the herd.

But the whole subject was at that time novel and very imperfectly understood in either country. The cause, pelagic sealing with its results, which gave rise to the complaints on each side was recent, and had not assumed the proportions which it subsequently exhibited, nor was the actual magnitude of it at that time known. Nor had the habits of the seals, their migrations, and the places at which they might from time to time be found, upon which the questions respecting rights of property in them so much depend, been studied and fully ascertained. The United States had, from the first, a conviction that their industry, which came to them as a part of their acquisition from Russia, of cherishing and protecting their seals upon the Pribilof islands, to the end that they might appropriate to themselves the annual increase without impairing the stock, could not be destroyed by the indiscriminate and unrestricted slaughter of the animal upon the seas. What the precise nature of their right was, and what its limits were, had not been subjected to thorough consideration. That they could prevent marauding upon the islands themselves and in the waters immediately surrounding them, and also any hovering in the neighbourhood of them for such purposes, seemed too plain for question. And in view of the circumstance that this industry had been cherished by Russia for half a century, and that the claims to prohibitive jurisdiction over Bering Sea had been for a similar period asserted, and, as was believed by the Government of the United States, for the most part acquiesced in, it seemed to the Congress of the United States a reasonable exercise of natural rights to prohibit the capture of fur-bearing animals in the eastern half of Bering Sea, and laws were enacted by that body designed to effect such prohibition.

These laws were not limited in their operation to citizens of the United States, but might be enforced against the citizens of other nations; and while, by their terms, they assumed to be operative only over the Territory of Alaska and "the waters thereof," their language was interpreted to include so much of Bering Sea as was embraced by the terms of the cession from Russia to the United States. At first there was little, if any, occasion for any attempt to enforce the prohibitions of this legislation against any persons engaging in pelagic sealing. It was not until the year 1886 that this mode of pursuit had been prosecuted sufficiently to attract the serious notice of the United States; but in that year quite a large number of vessels were fitted out for this purpose from Canadian ports on the northwest coast, and entered Bering Sea. Some of them were captured by armed vessels of the United States, and demands for the release of them were made by Her Majesty's Government.

In the discussions which followed those demands, the right of the United States to make such captures was asserted by them and denied by Her Majesty's Government; but the destructive tendencies of the pursuit thus sought to be prevented by the United States was substantially admitted and regarded on both sides as threatening practical extermination of the animals. This would have effected most disastrously the interests of both nations. Both would thereby lose, in common with the world at large, the benefits derived from the useful products of that animal. And while the United States would be subjected to a particular injury in being deprived of the profit coming from the sealing industries on the Pribilof Islands, Canada, one of the dependencies of Great Britain, would lose the supposed benefit of pelagic sealing; and England would be subjected to the far greater loss which would come from the breaking up of her industry in the manufacture of the sealskins, in which some thousands of her people were engaged.

These considerations naturally led to the suggestion that both nations possessed such a common interest in the preservation of the herd as to make it expedient for them to make an effort to reach some agreement designed to bring about that result, which, if successful, would not only terminate the existing dispute, but subserve the permanent interests of the parties.

In the absence of full and correct information by the diplomatic representatives of the two governments of the nature and habits of the animal and of the laws governing its reproduction and increase, the peculiar device for the preservation of wild animals by restricting their slaughter to a limited time was suggested, and apparently accepted on both sides, almost immediately, as being likely to furnish a sufficient safeguard against the apprehended destruction. The time during which such a restriction should be enforced, the only point upon which difference of opinion might have been anticipated, was at once agreed upon, and there can be little doubt that a formal agreement would have been immediately framed and ratified, had not Canada, moved, presumably, by the remonstrances of her pelagic sealers, interposed and pressed an objection.[1] It is fortunate, in the view of the United States, that such an agreement was not consummated. It would have proved wholly illusive.

The foundation of this concurrence in the device of a *close season* was the predominating necessity of preserving the animals from extinction; and there is no reason to suppose that, had it then appeared that absolute prohibition of pelagic sealing was requisite to that end, such prohibition would have been acceded to in the absence of remonstrance from Canada, originating in the present interest of persons engaged in pelagic sealing, an interest which regarded with comparative indifference the eventual fate of the animal. It is not to be supposed that the enlightened statesmanship of Lord Salisbury, unembarrassed by any difficulty growing out of the opposition of a great dependency of the British Empire, would have insisted for a moment upon a continued indulgence of the pursuit of pelagic sealing, had it appeared that such a course would have involved, in the near future, the practical extermination of the fur-seals. He surely would not have sacrificed the interests of the world and the very large special manufacturing interest of Great Britain, in order to save for a few years a pursuit which was rapidly working the destruction, not only of the great interests above referred to, but also of itself.

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[1] Diplomatic Correspondence, Case of the United States, Appendix, Vol. I, pp. 175 to 183, inclusive.

The failure of the negotiations referred to left the situation involved not only with the existing dispute, but aggravated by the certainty that fresh causes of irritation and contention would constantly arise; and the proportions of the controversy continued to increase until the peaceful relations of the two governments became most seriously threatened. A renewal of negotiations ensued, which led to the ratification of the Treaty under which the present Tribunal has been constituted. Whatever may have been the effect of the later negotiations in separating the parties more widely upon the main questions of right involved in the controversy, there is one point upon which, having been substantially agreed at first, they were brought more and more into unison, namely, the predominating necessity of preserving the seals. The Seventh Article of the Treaty calls upon the Tribunal to determine simply "what concurrent regulations outside the jurisdictional limits of the respective governments are *necessary* to the proper protection and preservation of the fur-seals." Fitness for the accomplishment of that end is the only description in the Treaty of the regulations which this Tribunal is to ascertain or devise. After the article had assumed its present form in the negotiations, some effort was made by Lord Salisbury to restrict its effect to confer upon the Tribunal the full discretion which its terms import; but this was resisted on the part of the United States, and the attempt was abandoned.[1]

The foregoing brief review of the negotiations will serve to show that the authority and discretion of the Arbitrators in respect of concurrent regulations is wholly unrestricted, except by the single condition that they are to be operative only *outside* of the municipal jurisdictions. There is not only no language importing that some form or degree of that pursuit is to be retained, but there is no implication even to that effect. It is not said that they are to be regulations *of pelagic sealing*. They are regulations "outside of the jurisdictional limits of the respective governments," and "for the proper protection and preservation of the fur-seal."

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[1] Diplomatic Correspondence, Case of the United States, Appendix, Vol. I, pp. 339 to 345, inclusive.

We are thus brought to the main question: What regulations are *necessary?* This depends upon a consideration of the nature and habits of the seals, the perils to which they are exposed, the causes which operate to diminish their numbers and prevent their reproduction, and the contrivances calculated to be most effectual to prevent the operation of those causes. It will be at once perceived that such a discussion must be, in great part at least, a simple repetition of that already gone through with upon the question of the claim of a property interest. This comes from the circumstance, which we trust has been made sufficiently manifest, that the institution of property is but the result of the solution by society of very much the same question which we are now proposing to enter upon. Human society has had before itself repeatedly or rather constantly, from its first beginnings, this same question—*what regulations are necessary to preserve the useful races of animals*—and the uniform solution has been to devise and adopt that particular class of regulations, which, taken together and enforced, *constitute the institution of private property* and its attendant safeguards, so far as that expedient is possible and effectual to the end; and it has been found thus possible and effectual in the case of all those animals which voluntarily so far subject themselves to human control as to enable their masters to appropriate the increase without destroying the stock. In respect to those races which can not be subjected to human control the solution has been to devise that class of regulations simply restrictive of slaughter, of which ordinary game laws are the types.

Inasmuch as it is indisputable that the fur-seals of Alaska are animals which submit themselves to human control, so far as to enable the proprietors of the soil to which they resort to take for human use the utmost increase without destroying the stock, the question what *regulations* are necessary for their proper protection and preservation is at once and finally answered. There is but one regulation needed "outside the jurisdictional limits of the respective governments," and that is that all pelagic sealing by the citizens of either nation be absolutely prohibited. Unless the uniform experience of human society from the earliest times in respect to such classes of animals is not likely to be repeated, or unless it seem probable that this tribunal has the wisdom and ingenuity to devise other regulations which human society has never as yet been able to conceive, which will effectually counteract the destructive tendency of pursuit by men excited and inflamed by the greed for gain, that regulation must certainly be deemed *necessary*.

We might well dismiss the subject of regulations at this point, as needing no further elucidation, and should do so except for the circumstance that it may possibly be considered that there is still a doubt concerning the extent and degree of the destructive tendency of a method of indiscriminate slaughter such as pelagic sealing is. That it operates directly to diminish the birth rate by sacrificing females instead of males, that it sacrifices large numbers which are never recovered, and that this is unnecessary, because there is a mode of selective slaughter which involves neither of these forms of waste, is undeniable; and, inasmuch as it is conceded by the Joint Report of the Commissioners of both Governments that under this method of capture the seals are diminishing with cumulative rapidity, there seems to be wanting no element requisite to justify the conclusion that this absolute prohibition is necessary. But it may still be contended that this mode of slaughter may, without absolute prohibition, be so restricted as to be compatible with the preservation of the race. This position is *assumed* in the Report of the Commissioners of Great Britain, but no proofs are adduced or reasons offered by them, to make good their assumption.

The first point, therefore, which should engage our attention is whether *any* allowance of pelagic sealing, however restricted in place or time, is compatible with the permanent existence of the seal herd. By the terms "any allowance," we do not mean the least measure of *formal* permission, such, for instance, as would allow the pursuit to be carried on during the months of December and January only, when the seas are so rough, and the seals found with such difficulty that there is no temptation to engage in the enterprise, but such permission as would afford some chance of success, and tempt undertakings that would result in the capture of considerable numbers of seals. Any license more restricted than this would be wholly unimportant as a license, and not worth discussion. It would amount for all substantial purposes to absolute prohibition, and should be viewed as such.

The question to which a clear answer should first be given is, "What *causes* a diminution of the herd?" It might at first be hastily supposed that any killing of seals would work *pro tanto* a decrease of the normal numbers; but a moment's reflection will show that this is not necessarily true. The animal being polygamous, and each male sufficing for from thirty to fifty or more females, we have only to apply common barnyard knowledge in order to learn that under normal conditions there must always be produced a large number of superfluous males, which, if not taken away, would, of themselves, by their fierce and destructive contests for the possession of the females, not only destroy themselves in large numbers, but greatly interfere with and obstruct the work of reproduction. This superfluity of males, therefore, may be taken not only without injury, but with positive benefit to the herd. It is obvious that it is only by *diminishing the birthrate* that the normal numbers of the herd can be injuriously affected. If the seals were not interfered with by man the herd would increase in number, until by the operation of natural conditions tending to restrict increase, and which operate with accumulating force as the numbers become large, such as deficiency of food, want of convenient room on the breeding places, the occupation of the males in destructive warfare among themselves, which must greatly interfere with the work of reproduction, the deaths become equal to the births. The numbers of the herd will, other things being unchanged, then remain constant. This is so clearly explained in the Report of the Commissioners of the United States that it is unnecessary to further enlarge upon it here. [1]

Disregarding the causes, other than the interference of man, which may operate to reduce the numbers of the herd, such as killer-whales or other enemies, or insufficiency of food, or disease, matters concerning which we have little or no knowledge, it is manifest that the killing of a single breeding female must, *pro tanto*, operate to diminish the number of births and thus tend towards the destruction of the animal. We need go no further. The conclusion from this single fact is certain and irresistible. Pelagic sealing *means* the killing, *principally* of *females* and *breeding females;* and if practiced to such an extent as to sacrifice such females in *considerable numbers*, must, in proportion to the numbers sacrificed, work a destruction of the herd; and the question when the destruction will be so complete as to amount to a sweeping away of the seals as a subject of value in commerce is a *question of time only*.

It is respectfully submitted to this Tribunal that right here is an end of legitimate debate. Any further discussion must relate to a question *how far* man can *tamper with the laws of nature* without incurring an injurious penalty. The answer of a tribunal bound to take notice of and administer the law of nature should be instant and decisive that he can not tamper with them *at all.* His sole business is to *ascertain* and *obey* them, well knowing, as he does, that any violation of them entails, with the certainty of fate, its corresponding punishment.

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[1] Case of the United States, pp. 346–350.

But, notwithstanding, let the inquiry *how soon* the destruction would be complete be pursued. And, for this purpose, let it be assumed that the present magnitude of the pelagic catch, and the consequent destruction of females, be continued. That catch amounted in 1891 to 68,000, according to the Report of the British Commissioners,[1] and the number of victims dying from wounds and not recovered is not included. If we knew what the number of breeding females in the herds was at the same time, some ground for conjecture would be furnished. But of this we are wholly ignorant. We do not know the numbers even of the whole herd at that or any other time, still less the number of breeding females. All conjectures upon these points are wild and untrustworthy. But there are some facts within our knowledge which throw a certain measure of light upon the inquiry. We know something concerning the average drafts made by the Russians during their occupation of the islands, and which were confined to *nonbreeding males.*

According to the Report of the British Commissioners the average annual draft for the eighty-one years of Russian occupation was 34,000.[2] But inasmuch as this includes long periods of abstinence made necessary by the depletion of the herd, from exceptional or unknown causes, it would probably be nearer to the truth to place the *usual* draft under the Russian occupancy at from 50,000 to 75,000. And during this period the draft was often made smaller than it might safely have been, by reason of a diminished demand in the market. The smaller number, however, would, obviously, be less favorable to any indulgence of pelagic sealing. We also know that under the more careful management of the United States an annual draft of 100,000 was made without any observed serious diminution of the herd until after pelagic sealing had assumed large proportions. It may, therefore, probably be assumed as reasonably certain that under normal conditions, the herd contains *such a number of breeding females* as will allow an annual taking of 100,000 nonbreeding males, *provided pelagic sealing is prohibited,* and that this draft of 100,000 *is the limit* of nondestructive capture. Taking the pelagic catch of 1891, which was 68,000, there must be added to it the number killed and not recovered; which, as we wish to keep *very*

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[1] Page 207. [2] Page 8.

*far within* the truth, may be taken as one in every four. The number 68,000 represents, therefore, three-fourths only of the total killed, which would thus amount to 68,000 plus 22,666, or 90,666. Of this number, observing the same caution in statement, at least three-fourths are females, which would thus number 68,000, or the number actually recovered. How many of these may be barren females, there is no means of ascertaining. We have no reason to suppose that the number is considerable.

The question whether it would take a long or short period to sweep away the herd if 68,000 females were actually taken from them each year furnishes its own answer. The same annual subtraction from a constantly diminishing sum would be an accelerating progress of destruction which would soon complete its work, *even if all taking of seals on the land were prohibited.* The only cause tending to moderate the rapidity of the destruction would be the increasing difficulty of securing the annual 68,000 with the diminishing number of females; but as this number diminished, the draft would be proportionately larger; and even this check upon the destruction would be done away with by the increasing force employed in the pelagic slaughter, so long as the pursuit held out a chance of profit; and the constantly increasing price of skins—the sure result of diminution of the supply in the market—would help to stimulate the prosecution of the work.

It is no longer matter of wonder that the much smaller pelagic catch, amounting in 1882 to 12,000, and annually increasing until it amounted in 1887 to 37,500,[1] had produced an effect which became distinctly manifest at the breeding places in 1889 and 1890, by the difficulty of finding the regular number of 100,000 young males for the purpose of slaughter, which led to an order to arrest the further killing. It would be *there* that the invasion upon the numbers of the herd would be first observable. No one could tell from any survey of the whole herd, stretched out over in the aggregate some 10 miles in extent, and presenting differing appearances from time to time, that the numbers had diminished until the diminution had reached an advanced stage; but any considerable decrease in the number of breeding females, involving, as it would, a decrease of births, would soon become manifest in the crucial practical test of selecting the quota of killable young males.[2]

But counsel for Great Britain may protest that it is not to the purpose to discuss the effects of *present* pelagic slaughter, because everyone concedes that it is destructive and should be restricted. It is true that this is admitted even by the Commissioners of Great Britain, although they assert that the destruction is in part imputable to excessive killing of males upon the islands; but it is none the less proper that, in the inquiry we are now upon, *how soon* a destructive method of capture will result in complete destruction, we should *begin* with a degree of it admitted to be speedily fatal. It tends to simplify the inquiry by drawing attention to the point how far any suggested methods of destruction will arrest this fatal destruction of females.

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[1] Report of Brit. Com., p. 207.

[2] Report of Am. Com., Case of the United States, pp. 341–345.

The problem, of course, is to devise some method of pelagic sealing which will prevent this measure of destruction, or anything approaching it. We must here turn our attention to the methods suggested by the British Commissioners. They have exercised their ingenuity to the utmost upon this point, and if the measures proposed by them are inadequate, we may reasonably infer that no sufficiently effective ones can be devised. The final result of their efforts is embodied in what is termed by them "Specific scheme of Regulations recommended." This is contained in the following paragraphs of their Report:

> 155. In view of the actual condition of seal life as it presents itself to us at the present time we believe that the requisite degree of protection would be afforded by the application of the following specific limitations at shore and at sea:
>
> (*a*) The maximum number of seals to be taken on the Pribilof Islands to be fixed at 50,000.
>
> (*b*) A zone of protected waters to be established, extending to a distance of 20 nautical miles from the islands.
>
> (*c*) A close season to be provided, extending from the 15th September to the 1st May in each year, during which all killing of seals shall be prohibited, with the additional provision that no sealing vessel shall enter Behring Sea before the 1st July in each year.
>
> 156. Respecting the compensatory feature of such specific regulations, it is believed that a just scale of equivalency as between shore and sea sealing would be found, and a complete check established against any undue diminution of seals, by adopting the following as a unit of compensatory regulation:
>
> For each decrease of 10,000 in the number fixed for killing on the islands, an increase of 10 nautical miles to be given to the width of protected waters about the islands. The minimum number to be fixed for killing on the islands to be 10,000, corresponding to a maximum width of protected waters of 60 nautical miles.
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> 157. The above regulations represent measures at sea and ashore sufficiently equivalent for all practical purposes, and probably embody or provide for regulations as applied to sealing on the high seas as stringent as would be admitted by any maritime power, whether directly or only potentially interested.[1]

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[1] Report of Br. Com., p. 25.

The first observation in relation to this suggested scheme which we have to make, is that it begins with a restriction, not upon *pelagic* sealing, but upon the taking of seals *upon the Pribilof Islands*, proposing a restriction of that to 50,000 annually. This is wholly inadmissible. Whatever the distinguished Commissioners may think proper or desirable in the way of restriction upon the action of the United States upon its own soil, it never occurred to the Government of Great Britain to ask that that nation should submit the exercise of its sovereign power to the authority of any tribunal; nor have we any reason to suppose that the diplomatic representatives of Great Britain, at any time in the course of the negotiations which resulted in the Treaty, imagined that any admissible scheme of regulations could embrace a limitation upon the killing of superfluous males upon the land, to the end that females might be killed upon the sea. It is enough to say that the Treaty strictly confines the regulations which the Tribunal may consider to such as are "outside the jurisdictional limits of the respective governments."

But let this pass in the present discussion, for we desire to consider the sufficiency of the proposed regulations upon the face of them. In substance, the scheme purports to be, so far as pelagic sealing is concerned, a mere interposition of *additional difficulties* in the prosecution of it by restricting it in place and time. It establishes a prohibited zone, with a radius of 20 miles from the islands, confines all pelagic sealing to the period between the 1st of May and the 15th of September in each year, and forbids entrance into Bering Sea before the 1st of July in any year. There are several observations immediately suggested by this scheme, which is declared by the contrivers of it to afford "the requisite degree of protection."

(1) In the first place it does not purport to restrict the number of seals so killed at sea to less than 68,000, unless the killing of that number is practically impossible under the conditions imposed. What guaranty or assurance is there that 68,000 females will not still be slaughtered under the limited conditions? All that is requisite to this end is the employment of an additional force of vessels and men, and this is easily possible, and will certainly be supplied if the *price of skins* will justify it. We know this would be the case, for it must be taken as certain that the force of pelagic sealers would be largely increased at the price

which skins commanded in 1891, when 68,000 were taken at sea. The force had been steadily increasing for years, and there is no reason for a belief that the progress would have ceased. Men will eagerly engage in such pursuits long after the certainty of a profit disappears. It still has great prizes, and it is these which tempt enterprise and risk. More than this, the scheme scarcely interposes any additional difficulties. It cuts off very little of the *time* during which pelagic sealing is now or can be prosecuted with advantage. A very small additional force would suffice to raise the capture to the amount obtainable by the present force operating without restriction.

But, finally, and decisively, the scheme itself furnishes a cause certain to bring to the work of destruction a force which would carry the slaughter far beyond the limit even of 68,000 females *per annum*. It cuts off from the market the supply from the breeding islands of 50,000 skins, leaving that enormous deficiency to be supplied by the pelagic sealers What greater boon could they ask? If these Commissioners had deliberately set about to contrive a project for the stimulation of pelagic sealing, and for the delight of those engaged in it, they could have devised nothing so well calculated for that end as to take out of the market 50,000 skins of the supply from the Pribilof Islands, when the price stands at 125 shillings per skin,[1] and give the pelagic sealers a chance to make up the deficiency between the 1st of May and the 1st of September, with the privilege of entering Bering Sea on the 1st of July, and of approaching the Pribilof Islands to a distance of 20 miles therefrom. Indeed, with such temptations, they would greatly increase the catch over present limits, even if they were excluded from Bering Sea altogether. Their catch in the North Pacific during the present year has, it is believed, amounted to nearly that.

But we must not do the Commissioners the injustice of confining criticism to a part of their scheme. It includes another feature of restriction, which is indicated as furnishing "a just scale of equivalency as between shore and sea sealing," and "a complete check against undue diminution of seals." This is that the United States may procure an addition of ten nautical miles to the radius of the zone of protection around the islands for each reduction of 10,000 below the maximum of 50,000 to be allowed to be killed upon the islands, so that a protected zone of a radius of 60 miles might be obtained by a voluntary reduction of the number to be taken on the islands to 10,000. Of course, with a further withdrawal from the market of the supply furnished by the islands, to the amount of 40,000 skins annually, that is to say, by leaving practically the *whole* market to be supplied by the pelagic sealers, a force in the shape of vessels and men would speedily show itself sufficient to slaughter, not 60,000 females a season, but 100,000, and even more, between the first of May and the 15th of September. But we fail to perceive the use, or the consistency, of imposing a limit to which such voluntary reductions of slaughter on the breeding islands should be carried by making the minimum 10,000. Why should the United States not be permitted, if they desired, to purchase a protected zone of 60 miles radius by giving up the right to slaughter a single seal? The scheme had as its sole merit some poor pretension in the way of comicality. Why should this be thrown away?

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[1] Case of the United States, Appendix, Vol. II, p. 561.

(2) We may be told that we are really, if not avowedly, imputing to these Commissioners an *intention* to protect and promote the interests of the Canadian sealers, and that this is unfair; that if they are laboring in behalf of pelagic sealing, they are working as much for the interest of citizens of the United States as for Canadians, inasmuch as pelagic sealing is as open to the former as it is to the latter. We do not forget the suggestion of the Commissioners to this effect,[1] and we remember at the same time, what was well known to them, that this occupation is not unreservedly open to citizens of the United States. That nation deems itself bound by the spirit and principles of the law of nature, holds itself under an obligation to use the natural advantages which have fallen to its lot, by cultivating this useful race of animals to the end that it may furnish its entire increase to those for whom nature intended it, wherever they dwell, and without danger to the stock. It holds, as the law of nature holds, that the destruction of the species by barbarous and indiscriminate slaughter is a *crime*, and punishes it with severe penalties. Its enactments adopted when it was supposed that the only danger of illegitimate slaughter was confined to Bering Sea were supposed to be adequate to prevent all such slaughter. Are the United States to be deprived of the benefit of the seals unless they choose to abandon and repudiate the plain obligations of morality and natural law?

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[1] Report of Br. Com., p. 20

(3) But what would be the *cost* of this scheme? *Some*, not indeed very large, additional difficulties would be interposed in obtaining the present pelagic catch of 68,000. It would require a somewhat larger investment of capital in vessels and appliances, and a somewhat greater expenditure in wages. This, as has been shown, would be fully reimbursed to the sealers, with a large additional profit, by means of the subtraction from the market of 50,000 skins now furnished from the Pribilof Islands, and the consequent increase of *price*. This increase of price must of course be paid by the *consumer*. We can not well conjecture the amount of it. It could hardly be less, if we may rely upon the teachings of the table of prices,[1] than $10 per skin, and might amount to much more. This additional cost, increased at every stage in the process of manufacture and exchange, might easily add $30 to the price of the skin when it comes to the consumer, and thus the world would be burdened by an additional charge for 100,000 skins to the amount of the easily possible sum of $3,000,000. And what would it cost to maintain the *naval police* required to enforce this scheme? How many armed steamers would be needed to guard effectually against the entrance of a trespasser within a prohibited zone, the circumference of which is upwards of 140 miles, in a region of thick and almost perpetual fogs? A million of dollars annually would be a moderate estimate of the expenditure required, and this must be paid by somebody, the Commissioners do not tell us by whom.

And *for whom* and *for what* is this prodigious tax to be imposed? For the Canadian sealers alone, and in order to enable them to make a profit, for a few short years, by the total destruction of a race of useful animals! If the assumption of such a burden were necessary, in order to *preserve* the seals, the propriety of making it would be worthy of consideration; but it is absolutely no misrepresentation or exaggeration to say that it would be a price paid, not for their preservation, but for their more speedy extermination. Not a dollar of this enormous expenditure is needed for any useful purpose. The entire increase of all the herd may be made available at the lowest possible price, without endangering the stock and without imposing any additional burden upon the world, by simply confining the capture of the seals to the methods allowed by natural law. Nor is the expenditure needed even for the mischievous purpose of killing off the seals. It is indeed a contrivance by which that result would be hastened, but if nothing were done, and pelagic sealing were permitted to be prosecuted without let or hindrance, the end would be reached nearly as soon.

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[1] Case of the United States, Appendix, Vol. II, p. 561.

(4) The severity amounting to injustice, in the operation of such a scheme would be worth commenting upon, were it on other grounds admissible. How would the sealer know, in that region of fog, whether he was inside or outside of the prohibited line? The opportunities for taking observations are rare. It may be said that he should take good care and give the line a wide inside berth. But laws should take notice of the weakness of men in the face of temptation. This scheme would be a lure to which many would yield, and find themselves caught, even when they intended not to transgress.

(5) The Commissioners of Great Britain have in their report studiously avoided the real problem, which it was their business to solve. That problem, according to their own view, was to devise some scheme of pelagic sealing which would preserve that pursuit, and at the same time not be fatally destructive to the herd of seals. True, this is impossible; but it was not so in their view, if we may credit their confident statements. They should, therefore, have first fixed upon *some definite number of females* which might be taking annually without initiating a gradual, but sure, destruction, and then devise a method which should restrict the capture to this number. This is the method pursued upon the Pribilof Islands. An estimate is made of the number of superfluous males that may be safely taken, and the annual draft is rigidly limited to that number. Had the Commissioners attempted this task, the utter impossibility of it would have stood self-exposed. They would have been immediately confronted with *two* refutations. In the first place, had they named 50,000, or 40,000, or 20,000, or even 10,000, females as a number which might be annually sacrificed without involving a sure destruction, the sure teachings of the natural laws governing the increase of such animals would at once have rejected the proposal.

Those laws tell us that *no* females must be taken. It is not from that quarter that man may make his drafts in *any* degree. The conditions are far more rigidly exacting than in the case of domestic cattle. *There* the opportunity for cultivation is unlimited. It may be prosecuted throughout the whole world, and an undue abundance be speedily produced. It is often necessary there to *keep down* the stock instead of increasing it, and therefore females must necessarily be taken to some extent; but with the seals the case is far otherwise. There are but few *possible* places in which the animal may be cultivated, and the march of destruction has greatly reduced these. They are wholly insufficient to supply the demand even under the most careful and prudent husbandry, and any taking whatever from breeding females is plainly inadmissible. This is of itself an end of the question, for to say that pelagic sealing must be limited to a catch of 10,000 (and, as we have seen, in pelagic sealing the number of females killed equals the whole number of both sexes actually recovered) is to prohibit it. The game would no longer be worth the candle. It would not be pursued under such conditions. In the next place, had the Commissioners fixed upon any definite number, it would be absolutely impossible to frame any scheme by which the slaughter could be limited to it. Their own wretched device of a limitation of the pursuit in time and place, much better calculated to increase than to restrict the slaughter, is, of course, beneath attention. We do not refer to the inefficiency of their particular suggestions. There is an inherent impossibility which no ingenuity, combined with a supreme desire to accomplish the purpose, can surmount.

(6) The fundamental error of the Commissioners of Great Britain, as of all who either deceive themselves, or attempt to deceive others, with the illusion that it is possible to permit in any degree the indiscriminate pursuit of a species of animals like the seals, so eagerly sought, so slow in increase and so defenseless against attack, and at the same time to preserve the race, consists in assuming that the teachings of nature can be replaced by the cheap devices of man. The first and only business of those who, like the Commissioners, were charged with the duty of ascertaining and declaring what measures were *necessary* for the preservation of this animal was to calmly inquire what the laws of nature were, and conform to them unhesitatingly. It would then have been seen by them that *no capture whatever* of such animals should be allowed except capture *regulated* in conformity with natural laws; and that all *unregulated* capture was necessarily destructive, and a crime; that there could be regulated capture upon the land, and upon the land alone, and that all attempts to regulate capture on the sea must necessarily be abortive; that, consequently, the only regulation to be made in respect to pelagic sealing was to prohibit it altogether, which is tantamount to the award of property to the proprietors of the breeding

grounds. The attempt to apply regulations in the nature of game laws to the pursuit of such animals is a misdirected effort, founded upon a disregard of their nature and habits. They are not like wild ducks, or herring, or mackerel, animals over which man has no control, and which reproduce themselves in prodigious numbers, and have abundant means of eluding pursuit, and which can not be cultivated by art and industry; but a species exhibiting all the conditions requisite to property, and which must be treated accordingly.

(7) This error is not imputable to ignorance on the part of the Commissioners. It does not arise from any failure to take notice of the nature and habits of the animal. There is, indeed, in their report an avoidance, which appears to be industrious, of any special inquiry into the nature and habits of seals, with the view of ascertaining and reporting for the information of this Tribunal whether they really belong to that class of animals which are the fit subjects of property, or that of which ownership can not be predicated, and which can, consequently, be protected against excessive sacrifice, only by the rough and ineffective expedient of game laws; but, nevertheless, they fully admit that perfectly effective regulation of capture is easily possible at the breeding places and there alone. They say:

> 116. It is, moreover, equally clear from the known facts that efficient protection is much more easily afforded on the breeding islands than at sea. The control of the number of seals killed on shore *might easily be made absolute*, and as the area of the breeding islands is small, it should not be difficult to completely safeguard these from raiding by outsiders, and from other illegal acts.[1]

What *is* the avowed ground, aside from the assumed right of individuals to carry on pelagic sealing, upon which these Commissioners felt themselves not warranted in yielding to the decisive facts thus stated by them, and declaring that a perfect protection would be given to the seals by simply prohibiting capture at sea? It is, to shortly sum it up, that the power thus possessed by the occupants of the breeding places has been abused in the past, and probably will be in the future, by an excessive slaughter of young males. It is that the United States put the property into the hands of lessees, and that, although the leases are long ones, yet the lessees are so far barbarians, or children, that they are incapable of comprehending their own interests, and incapable of restraining their desire for present enjoyment, in order to secure their permanent welfare; and that the United States Government, which has a supervising control, either from the same or some other unexplained reason, is equally incapable of protecting its own interests and discharging its duty to mankind by preserving those bounties of nature which have been intrusted to its keeping. In short, their argument is that those means which nature has pointed out, and which society from the earliest dawn of civilization has adopted and followed, for the purpose of preserving the gifts of nature and making them in the highest degree available for the uses of man, have, in this instance, proved a failure; that the force of the universal motive of self-interest has, in this instance, not been effective with the American people, and consequently an occasion has arisen for the invention, by the wisdom and ingenuity of these Commissioners, of some device better adapted to the desired object! This is no perversion or exaggeration of the argument of this report. It may be left to fall from its intrinsic weakness, not to say absurdity.

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[1] Report of Br. Com., p. 19.

(8) We are reluctant to make any reference to *motives;* but, where opinions are, as in this case, *made* evidence, the question of good faith is necessarily relevant. Why is it that these Commissioners have chosen to disregard the plain dictates of reason and natural laws which they were bound to accept, and to recommend some cheap devices in their place, when they so clearly perceived those dictates? We are not permitted to think that this was in *conscious* violation of duty, if any other explanation is possible. The only apology we can find comes from the fact, clearly apparent upon nearly every page of their report, that the *predominating* interest which they conceived themselves bound to regard was not the preservation of the seals, but the protection of the Canadian sealers. This explanation at once accounts for all their extraordinary recommendations and all their varying inconsistencies. Hence every degree of restraint upon pelagic sealing is reluctantly conceded, and yielded only when it is compensated for, and more than compensated for, by an added restriction of the supply furnished to the market from the breeding islands. As the work of the pelagic sealers is on the one hand restricted in time or place, and thus *discouraged,* it is on the other *stimulated* by the certainty of a better market and a richer reward. So persistently and exclusively have they kept this policy before them as their main object, that an *ideal* has been

formed in their minds which they openly avow, and to attain which is their constant effort. This ideal is that *all* taking of seals on land should be prohibited, and pelagic sealing be made the only lawful mode of capture.

They thus express themselves: "It has been pointed out, and we believe it to be probable, that if all killing of seals were prohibited on the breeding islands, and these were strictly protected and safe-guarded against encroachment of any kind, sealing at sea *might be indefinitely continued without any notable diminution*, in consequence of the self-regulative tendency of this industry."[1]

And, suggesting, as the only objection to this policy which occurs to them, that it might be too much to expect of the United States to thus guard the islands and support a native population of 300 at its own expense, they continue: "It may be noted, however, that some such arrangement would offer, perhaps, *the best and simplest solution of the present conflict of interests*, for the citizens of the United States would still possess equal rights with all others to take seals at sea, and in consequence of the proximity of their territory to the sealing grounds they would probably become the principal beneficiaries!"[2]

And they finally come to the conclusion that *any* taking of seals at the breeding places is an *error* for which there is no defense except long usage, and even that they regard as a doubtful apology. They say:

> While the circumstance that long usage may, in a measure, be considered as justifying the custom of killing fur-seals on the breeding islands, many facts now known respecting the life history of the animal itself, with valid inferences drawn from the results of the disturbance of other animals upon their breeding places, as well as those made obvious by the new conditions which have arisen in consequence of the development of pelagic sealing, point to the conclusion that the breeding islands should, if possible, remain undisturbed and inviolate.[3]

These references to the opinions expressed in the report of the Commissioners of Great Britain when taken together with the scheme recommended by them, leave no room for doubt that the defense of the Canadian sealers was, from first to last, their *predominating motive*, and enable us to make for them the apology that they conceived that this was the duty with which they were especially charged. If this be the fact, it is easy to perceive how all their reasonings and recommendations should receive a color and character. We feel obliged to say that we can perceive no other ground upon which their action may be made consistent with good faith.

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[1] Report of Br. Com., p. 20, sec. 121.

[2] Report of Br. Com., p. 20, sec. 125.

[3] Report of Br. Com., p. 27, sec. 166.

(9) But what are their avowed reasons, if any, for forming this *ideal* of an exclusive adoption of pelagic sealing as a proper scheme of regulations for preserving the seals? We can gather from the pages of their report these three:

(*a*) That pelagic sealing is a national or common *right*, which can not be taken away.

(*b*) That pelagic sealing has a "self-regulating tendency."[1]

(*c*) That sealing on the breeding places is destructive, because of the excessive slaughter of young males, which, as they allege, is and will be indulged in, although it need not be.

The first of these reasons is not relevant here, nor should it have had any place in the consideration of these Commissioners. It was a matter committed to the determination of other parties, and is elsewhere discussed by us. It may, however, be here observed that if it be a natural right of citizens of Great Britain, it must be held, as all other rights are, in subordination to the power of governments to enact legislation to preserve the useful races of animals, and Great Britain may certainly, if she pleases, prohibit her citizens from exercising it, as the United States do. And if it be the subject of governmental restriction, as the commissioners themselves propose to make it, it may be also prohibited by governmental regulation.

The third ground we have already considered. Unfounded in fact, repugnant to reason, absolutely contradicted by the experience of nearly a century on the Pribilof Islands, and, as the Commissioners themselves admit, by that on the Commander Islands for a similar period,[2] we dismiss it without further notice.

The *second* ground, the alleged "self-regulative tendency," may be briefly noticed. What is this asserted "*self-regulating tendency?*" We must describe it in the language of the Commissioners themselves. They say:

"In sealing at sea the conditions are categorically different, for it is evident that by reason of the very method of hunting, the profits must decrease, other things being equal, in a ratio much greater than that of any decrease in the numbers of seals, and that there is, therefore, inherent *an automatic principle of regulation* sufficient to prevent the *possible destruction of the industry* if practiced only at sea."[1]

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[1] Report of Br. Com., p. 20, sec. 121.

[2] Report of Br. Com., p. 15, sec. 92.

But what if *other things* should *not* be equal, as they certainly would not be? What if, as the supposed difficulties in capturing seals were increased, making it impossible for the same force to make the same catch in the same time, and thus diminishing the supply offered in the market, the price of skins should rise, as it certainly would? Would the effect be anything except to stimulate the pursuit, bring into play a greater energy and skill, attract a larger force, and thus lead to an equal, and probably a much larger catch? In the whale fishery the price of the product continually rising so stimulated the pursuit as to attract a continually augmenting force, with the result of nearly exterminating some of the species. The fate of the sea otter had been the same. But we need not go further than the statistical tables of pelagic sealing furnished by the Commissioners. Whatever may have been the increase of difficulty in obtaining seals consequent upon the increased pursuit, the price has afforded a stimulus sufficient to bring into the field a continually augmenting force, and has thus brought the aggregate of the pelagic catch from 12,000 in 1882 to 68,000 in 1891.

(10) In conclusion it is submitted that the scheme proposed by the Commissioners of Great Britain is a contrivance, *not* for the *preservation* of the seals, which was by the Treaty made the sole object of their inquiries and labors, but for *the promotion of pelagic sealing*, and, consequently for the *destruction* of the seals. This is its character even upon their own views. They insist that the slaughter of 100,000 young *males* upon the Pribilof Islands was, even before pelagic sealing was prosecuted, an excessive draft rapidly tending to a destruction of the herd; and yet their scheme directly and necessarily involves a slaughter of many more than 100,000 seals of which more than half will be *females.*

It is believed that the Tribunal will not fail to perceive that a thorough consideration of the question of the feasibility of any system of regulating pelagic sealing which would permit that business to be prosecuted, and yet secure the herd from extermination, ending, as it must, in a conviction that such a system is not feasible, leads, by a somewhat different path, to the same conclusion which is reached by a direct inquiry into the question of property. It fully establishes the conclusion that the only "concurrent regulation" which can preserve the seal herds from practical extermination is one simply and absolutely prohibitive of pelagic sealing, and that this therefore is necessary. And this is tantamount, in its effect, to the recognition of a property interest in the proprietors of the breeding islands.

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[1] Report of Br. Com., p. 19, sec. 118.

If a *bona fide* effort were made to allow pelagic sealing under conditions which would reduce its destructive effect to a point where it might be neglected as unsubstantial or insignificant, *real, not pretended*, restriction would be secured. The effort would be to *take away*, not to *add*, inducements to embark in it. The method would be to *discourage* it, to throw *difficulties* in the way of it, to so restrict it in place or time, or both, that little chance for profit would remain. To this end a prohibition during March and April would be wholly useless. It could not be safely allowed even for a single month in the period from April to October. The privilege must be limited to stormy weather which repels enterprise. And this is to prohibit. If we mean to preserve the seals, we must submit to be governed by those natural laws upon an observance of which their preservation depends. These teach, with a directness and certainty which can not be misunderstood, two things.

First. In the case of animals over whom man has no control, such as most wild animals are, if they are in danger of destruction from too eager pursuit, restrictions in the nature of game laws, which operate simply to diminish the destruction, without changing its character, are the only preventive measure which society can apply. And it can not absolutely prohibit destruction, for this would be to prohibit the *use* of nature's gift. This remedy is apt to be insufficient, from the difficulty of enforcement, but it tends to preserve, and sometimes succeeds in preserving, that which it is designed to save.

Second. But where some men have such a control over the animal that they can by abstinence, art, and industry reap its full natural increase and make it available for human wants, and at the same time preserve the stock, society can, as it does, preserve the animal, and at the same time secure the full benefit of its natural increase by permitting them to kill at discretion, and prohibiting killing by all others.

The United States stand upon the assertion of their property interest, and if that is recognized, they conceive that they have the ability to protect it on every sea. It is not usual for one nation to voluntarily ask the aid of another in the defense of its rights. Each is ordinarily left to enforce its own laws with its own power. The United States do not ask for the slightest measure of aid in the performance of what is properly their own exclusive work.

But it may happen, and does happen in the present case, that what from natural situation may be peculiarly the proper work of one nation, may yet be the work, in some degree, of others. The destruction of a useful race of animals is the destruction of property belonging to the whole world, and is a crime against the law of nations. To prevent and punish it is as distinctly the duty of all civilized nations as it is to prevent and punish the crime of piracy. The pelagic sealer is *hostis humani generis*, just as the pirate is, though with a less measure of enormity and horror. It is, therefore, part of the duty of nations to forbid their citizens from engaging in the practice of pelagic sealing, and, as the parties to this controversy have voluntarily submitted it to this Tribunal to declare what regulations outside of their respective jurisdictions it is their duty to concur in and enforce for the preservation of the seals, it is entirely proper that the tribunal should frame, even while recognizing the property interest asserted by the United States, a simple regulation, to be concurrently adopted and enforced by each nation, prohibiting all sealing at sea, except by the native tribes of Indians on the northwest coast of America for the purposes of food and clothing in the manner in which they were originally accustomed to prosecute it.

JAMES C. CARTER.

## FIFTH.

### CLAIMS FOR COMPENSATION.

### I.—Damages Claimed by the United States.

It is provided in article VIII of the Treaty that either party may submit to the Arbitrators any question of fact involved in any claim it may have against the other; and ask for a finding thereon, "*the question of the liability of either government upon the facts found to be the subject of further negotiation.*"

As the undersigned construes this paragraph, it limits the range of inquiry by the Tribunal to facts which bear only upon the amount of the claims submitted, as the question of *liability* is left open to be settled by negotiation.

And in the fifth article of the *Modus Vivendi* of May 9, 1892,[1] it is provided that—

> If the result of the Arbitration be to affirm the right of British sealers to take seals in the Bering Sea, within the bounds claimed by the United States under its purchase from Russia, then compensation shall be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the Arbitration, upon the basis of such a regulated and limited catch or catches as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the Arbitration shall be to deny the right of British sealers to take seals within said waters, then compensation shall be made by Great Britain to the United States (for its citizens and lessees) for this agreement to limit the island catch to 7,500 a season, upon the basis of the difference between this number and such larger catch as, in the opinion of the Arbitrators, may have been taken without an undue diminution of the seal herds.

This leaves the number of seals which might have been taken in the Bering Sea by the British sealers, and upon the Pribilof Islands by the lessees of the United States, without danger of reducing the seal herd, wholly to the judgment of the Tribunal under the proofs submitted.

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[1] Case of the United States, Appendix, Vol. I, p. 7.

In the printed Case submitted on behalf of the United States, a claim is presented under the clause last quoted, for compensation to the United States for the increased amount of rental which the United States would have received upon an additional number of skins taken, and for a bonus of $9.62½ on each skin, to be paid by the lessees of the islands, over and above the bonus upon the 7,500 skins, which are permitted to be taken under the *Modus Vivendi.*[1] And a claim is also submitted by the United States in behalf of its lessees for the profit the lessees would have made upon an increased number of seals which might have been taken above the 7,500 but for the *Modus Vivendi.*[2]

The Case also submits a claim in behalf of the United States and lessees for compensation for the limited number of seals taken under the *Modus Vivendi* of 1891.

Frankness requires us, as we think, to say that the proofs, which appear in the Counter Case of the United States as to the condition of the seal herd on the Pribilof Islands, show that the United States could not have allowed its lessees to have much, if any, exceeded the number of skins allowed by the *Modus Vivendi* of 1892 without an undue diminution of the seal herd, and upon this branch of the case we simply call the attention of the Tribunal to the proofs, and submit the questions to its decision.

As to the claims submitted in behalf of the United States and its lessees under the *Modus Vivendi* of 1891, the undersigned also feels constrained to say that, as no provision for the payment of compensation to either party is provided for in that agreement, and as, under the laws of the United States and lease of the islands by the United States to the North American Commercial Company, the United States had the full power, through its Secretary of the Treasury, to limit the catch in any year to such number as in the discretion of the Secretary of the Treasury might seem proper, we must admit that no right of compensation accrued under that agreement to either the United States or its lessees, for the reason that the agreement was wholly voluntary, and such as the two governments were entirely competent to make, and no right to compensation would accrue to either government or its citizens unless specially provided for in the *Modus Vivendi.*

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[1] Case of the United States, pp. 286–289.

[2] *Ibid.*, pp. 289–291.

## II.—DAMAGES CLAIMED BY GREAT BRITAIN.

The claims submitted on the part of Great Britain are for damages sustained by certain of its subjects by reason of the seizure by the United States of certain vessels alleged to belong to such subjects, and warning certain British vessels engaged in sealing not to enter Bering Sea, and notifying certain other British vessels engaged in the capture of seals in Bering Sea to leave said sea, whereby it is insisted that the owners of such vessels sustained losses and damages, as set forth in the respective claims, these claims being stated in detail in the "*Schedule of particulars*" of said claims appended to the British Case.

The right and authority of the United States to protect the seal herd, which has its home in the Pribilof Islands, and in the exercise of such right to make reprisal of seal-skins wrongfully taken, and to seize, and, if necessary, forfeit the vessels and other property employed in such unlawful and destructive pursuit, is a necessary incident to the right asserted by the United States to an exclusive property interest in said seals and the industry established at the sealeries.

We, however, preface what we have to submit on this feature of the case by saying that, if it shall be held by this tribunal that these seizures and interferences with British vessels were wrong and unjustifiable under the laws and principles applicable thereto, then it would not be becoming in our nation to contest those claims, so far as they are just and within the fair amount of the damages actually sustained by British subjects.

And, even if it shall be decided by this Tribunal that the United States were not justifiable, under the circumstances and the law, in making such seizures and interfering with British subjects in the pursuit and capture of fur-seals in the Bering Sea, still that decision would furnish no ground for claims based on wholly illegal and untenable grounds, nor for extortionate demands.

The actual damages sustained by these British subjects, in behalf of whom these claims are presented by the British Government, must, undoubtedly, be finally settled, according to the terms of the Treaty, by negotiations hereafter to be had; but, as findings of fact in regard to these claims are asked for, our purpose in this part of the argument is to call attention to some of the elements which go to make up these claims, and show, as we think, conclusively, that such elements can not enter into claims for compensation against the United States under the Treaty.

And we contend—

First. That only claims properly due to *subjects of Great Britain* should be submitted on the part of that nation and findings of facts asked in relation thereto; and in the application of this principle we insist that it is shown by the Counter Case of the United States and the Appendix thereto that the schooner *W. P. Sayward* and the steam schooners *Thornton*, *Anna Beck*, *Grace*, and *Dolphin*, with all their supplies and outfits, were in fact owned by one Joseph Boscowitz, a citizen of the United States at the time these vessels were respectively seized by the United States officers;[1] that for some time prior to the fall of 1885 said schooner and steam schooners had been engaged in the sealing business in the joint interest of said Boscowitz and one James Douglas Warren; that Warren had no capital, and although nominally interested in said vessels and their catch as half owner, yet in fact the money representing his share in the vessels was loaned to him by Boscowitz, and secured by mortgages to Boscowitz on the vessels; that in the fall of 1885 Warren became insolvent and made an assignment for the benefit of his creditors, and in order to transfer the title to these vessels a sale of them was made under the Boscowitz mortgages, and one Thomas H. Cooper bid the vessels off at such sale for the sum of $1, Cooper being a brother-in-law of Warren and a British subject, residing in San Francisco, Cal.; that on becoming such purchaser Cooper executed mortgages to Boscowitz on the vessels for their full value, which mortgages Boscowitz held at the time of the seizures, the whole transaction being had solely for the purpose of securing a British registration for said vessels, and thereby enabling Boscowitz and Warren to carry on the sealing business under the British flag.[2]

The testimony showing Boscowitz was a citizen of the United States is found in the affidavits of T. T. Williams[3] and a report of Levi W. Myers, United States consul at Victoria, B. C., dated November 10, 1892.[4] While the proof as to the relations between Boscowitz and Cooper is found in the deposition of Thomas H. Cooper, the alleged owner of the said vessels;[1] and the relations between Boscowitz and Warren are shown in the testimony of Boscowitz and Warren, and the pleadings and decrees in the case of Warren *vs.* Boscowitz and the cross case of Boscowitz *vs.* Warren, in the courts of British Columbia.[2]

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[1] Counter Case of the United States, p. 30; App., pp. 255, 351.

[2] Counter Case of the United States, App., pp. 321–325.

[3] *Ibid.*, p. 351.

[4] *Ibid.*, p. 255.

The proof also shows that the schooners *Carolina* and *Pathfinder*, with their supplies and outfits, were, in fact, owned at the time they were seized by one A. J. Bechtel, a citizen of the United States (see deposition of W. H. Williams,[3] and a report of Levi W. Myers, United States consul at Victoria, B. C.[4]), although said vessels were registered in the names of British subjects.[5]

And that the schooners *Alfred Adams*, *Black Diamond*, and *Lily*, were in fact owned, at the time they were respectively seized by one A. Frank, a citizen of the United States (see deposition of T. T. Williams),[6] although registered in the names of British subjects.[7]

It will be seen by looking over the list of vessels alleged to have been seized, or interfered with, that the list contains twenty vessels, but that two of the vessels named in that list, the *Triumph* and the *Pathfinder*, were seized or interfered with twice;[8] so that, in fact, the schedule contains the names of only eighteen separate vessels in regard to which claims are made, and of these eighteen, ten of them were owned by citizens of the United States.

It is assumed on the part of the United States that if the proof submitted shows that these ten vessels were really the property of citizens of the United States, although they had a nominal registry in the names of British subjects, such demonstration will be sufficient to justify a finding by the Tribunal that no citizen of Great Britain has sustained damage by the seizure of the *Sayward*, *Anna Beck*, *Thornton*, *Grace*, *Dolphin*, *Carolina*, *Pathfinder*, *Alfred Adams*, *Black Diamond*, and *Lily*.

We therefore confidently ask and expect the decision and finding of the Tribunal that these claims do not belong to British subjects, and for that reason the Tribunal can not be called upon to find any facts respecting them.

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[1] *Ibid.*, pp. 320-325.

[2] *Ibid.*, pp. 301-320.

[3] Counter Case of United States, Appendix, p. 351.

[4] *Ibid.*, 261.

[5] Case of Her Majesty's Government, Schedule of Claims, pp. 1, 40; Counter Case of United States, Appendix, p. 256.

[6] Counter Case of United States, Appendix, p. 352.

[7] Case of Her Majesty's Government, Schedule of Claims, pp. 32, 48, 50.

[8] *Ibid.*, p. 1.

To justify a finding upon a claim, it must be made to appear affirmatively, by a clear preponderance of proof, that the claim is owned by one of the Governments, parties to this Arbitration, or to a citizen or subject of such Government.[1]

We insist that we may, with propriety, go farther and say that, if there is even doubt that a claimant is a citizen of the nation that presents a claim in his behalf, that doubt should of itself be enough to preclude any finding of facts involved in such claim.

The powers and jurisdiction of this Tribunal are delegated to it by the Treaty which is in itself but a contract or agreement and its terms can not be enlarged or amplified by construction.

In taking this ground we do not intend to cast any aspersion upon the good faith of the British Government, or its Agent, for having presented these claims, as we admit that on the face of the claims as presented they appear to be in favor of British subjects. But we do insist that it is right for this Tribunal to go behind the face of the papers and ascertain from proofs furnished, whether or not the persons to be benefited by the allowance or payment of these claims are in fact British subjects, and that no facts should be found involved in any claim where there is even good ground for doubt that such claim belongs to a British subject.

Second. All these claims but two (the *Triumph*, No. 11,[2] and the *Pathfinder*, No. 20,[3] of schedule) *contain an item for "loss of probable catch," "loss of estimated catch," "balance of probable catch," "probable catch," etc.*[4]

All of which will more fully appear by the following tabulated statement:

| | |
|---|---|
| No. 1. *Carolina*, estimated catch | $16,667 |
| No. 2. *Thornton*, estimated catch | 16,667 |
| No. 3. *Onward*, estimated catch | 16,667 |
| No. 4. *Favorite*, estimated loss of catch | 7,000 |
| No. 5. *Sayward*, probable catch of 1887 | 19,250 |
| No. 6. *Grace*, probable catch | 23,100 |
| No. 7. *Anna Beck*, probable catch | 17,323 |
| No. 8. *Dolphin*, probable catch... | 24,750 |

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[1] Article VIII of Treaty of Arbitration.

[2] Case of Her Majesty's Government, Schedule of Claims, p. 36.

[3] *Ibid.*, p. 57.

[4] *Ibid.*, pp. 1–56.

| | |
|---|---|
| No. 9. *Alfred Adams*, probable catch | $19,250 |
| No. 10. *Ada*, probable catch | 15,818 |
| No. 12. *Juniata*, estimated catch | 9,424 |
| No. 13. *Pathfinder*, estimated catch | 15,363 |
| No. 14. *Triumph*, estimated catch | 19,424 |
| No. 15. *Black Diamond*, estimated catch | 16,192 |
| No. 16. *Lily*, balance of catch | 14,136 |
| No. 17. *Ariel*, balance of estimated catch | 9,248 |
| No. 18. *Kate*, balance of catch | 10,960 |
| No. 19. *Minnie*, balance of catch | 16,112 |
| | 357,353 |

All these items are subject to the objection that they are prospective profits, uncertain and contingent in their nature, and can not be made the basis of a claim for compensation to the owners of these vessels.

In Sedgwick, on the "Measure of Damages," p. 69, sixth American edition, it is said:

> The early cases in both the English and American courts, generally concurred in denying profits as any part of the damage to be compensated, whether in cases of contract or tort.

In a case for illegal capture, where one of the items of the claim for damages was the profits on the voyage broken up by the capture, the court said:

> Independent, however, of all authority, I am satisfied upon principle that an allowance of damages upon the basis of a calculation of profits is inadmissible. The rule would be in the highest degree unfavorable to the interests of the community. The subject would be involved in utter uncertainty. The calculation would proceed upon contingencies and would require a knowledge of foreign markets to an exactness in point of time and value, which would sometimes present embarrassing obstacles. Much would depend upon the length of the voyage and the season of the arrival; much upon the vigilance and activity of the master, and much upon the momentary demand. After all, it would be a calculation upon conjecture and not upon facts.[1]

In the case of the *Amiable Nancy*, Mr. Justice Story, speaking for the United States Supreme Court, said:

> Another item is $3,500, for the loss of the supposed profits of the voyage on which the *Amiable Nancy* was originally bound. In the opinion of the court, this item also was properly rejected. The probable or possible benefits of a voyage, as yet *in fieri*, can never afford a safe rule by which to estimate damages in cases of a marine trespass. There is so much uncertainty in the rule itself, so many contingencies which may vary or extinguish its application, and so many difficulties in sustaining its legal correctness, that the court can not believe it proper to entertain it. In several cases in this court, the claim for

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[1] The schooner *Lively*, 1 Gallison, 314.

profits has been expressly overruled; and in Del Col *v.* Arnold (3 Dall., 333) and *The Anna Maria* (2 Wheat., 327), it was, after strict consideration, held that the prime cost, or value of the property lost, at the time of the loss, and in case of injury, the diminution in value by reason of the injury, with interest upon such valuation, afforded the true measure for assessing damages. This rule may not secure a complete indemnity for all possible injuries; but it has certainty and general applicability, to recommend it, and, in almost all cases, will give a fair and just recompense.[1]

And in Wood's Mayne on Damages,[2] the author, speaking of damages in cases of tort, says:

> In general, however, injuries to property, where unaccompanied by malice, and especially where they take place under a fancied right, are only visited with damages proportionate to the actual pecuniary loss sustained.

While it is conceded that there has been some relaxation of the rigid rule of the early cases in England and the United States, in regard to the allowance of profits as an element for the award of damages or compensation, it is undoubtedly still the rule in both countries that profits can only be allowed as damages where they are in the contemplation of parties, in cases arising on contract, and where they are the necessary and proximate result of the injury in cases of tort, and in those latter cases only where they can be proven or established with substantial certainty.[3]

These vessels were all engaged in a hazardous voyage upon the boisterous waters of the North Pacific Ocean and Bering Sea, subject to all the perils of the sea, and the mind can hardly conceive any event more uncertain and contingent than the number of seals they would have captured if they pursued their voyages unmolested. Shipwreck and every other element of uncertainty, including the proverbial uncertainty which is always an element in fishing and hunting expeditions, would seem to attend all such ventures, and the cogent reasoning of Mr. Justice Story in the cases just cited seems unqualifiedly applicable to the items of "probable catch," etc., presented in this schedule of claims.

The Tribunal will bear in mind that the United States do not occupy the position of a tort-feasor, subject to exemplary or vindictive damages. "The King (Sovereign) can do no wrong." The acts, in respect to which compensation is asked on behalf of these British subjects, were performed by the United States in the exercise of its sovereignty, and the execution of its statutory laws, and no malice or other unjust motive can be imputed to those acts.

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[1] 3 Wheaton's U. S. Repts., 546; see also Smith *vs.* Coudry, 1 How. U. S. Repts., 28-34.

[2] First American edition, from third English Edition, p. 56.

[3] Hadley *vs.* Baxendale, 9 Exch. 341; Masterton *vs.* Mayor of Brooklyn, 7 Hill, 62.

Among the claims presented by the United States in behalf of its citizens to the Tribunal of Arbitration upon the Alabama claims, which met at Geneva in 1872, under the treaty between Great Britain and the United States, were a large number of claims like those now under consideration, for the prospective earnings of ships destroyed by the rebel cruisers in the late civil war of the United States, and that tribunal, by the unanimous vote of its members, said in regard to such claims:

> And whereas prospective earnings can not properly be made the subject of compensation inasmuch as they depend in their nature upon future and uncertain contingencies, the tribunal is unanimously of opinion that there is no ground for awarding to the United States any sum by way of indemnity under this head.[1]

It is therefore respectfully submitted that the rule of decision adopted in the case of the Alabama claims is well established in the jurisprudence of the two nations now at the bar of this High Tribunal; and in the light of the authorities cited the undersigned respectfully insists that the items in these claims for "probable catch," "estimated catch," etc., which amount in the aggregate to over two-thirds of the grand total of the claims presented, must be considered as wholly speculative and so uncertain that Great Britain is not entitled to any finding as to any fact involved therein, except the fact of their uncertainty, which appears on the face of the claims themselves.

In the claims growing out of the seizures of the *Carolina*, *Thornton*, *Onward*, *Sayward*, *Grace*, *Anna Beck*, *Dolphin*, and *Ada* there are also items for the future earnings of those vessels,[2] namely:

| | |
|---|---|
| No. 1, *Carolina*, seized 1886: | |
| Claims for earnings in 1887 | $5,000 |
| Claims for earnings in 1888 | 5,000 |
| No. 2, *Thornton*, seized in 1886: | |
| Claims for estimated loss to owner by detention in 1887 | 5,000 |
| Claims for estimated loss to owner by detention in 1888 | 5,000 |
| No. 3, *Onward*, seized in 1886: | |
| Claims reasonable profit for season of 1887 | 5,000 |
| Claims reasonable profit for season of 1888 | 5,000 |

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[1] Geneva Arbitration, Congressional publication, vol. IV, p. 53; see also Wheaton's International Law (Boyd's 3d English edition), sec. 539, *t*, p. 592.

[2] Case of Her Majesty's Government, Schedule of Claims, pp. 5, 9, 14, 19, 23, 27, 31, 36.

| | |
|---|---|
| No. 5, *Sayward*, seized in 1887 : | |
| Claims for earnings in coasting trade in fall of 1887 | $1,200 |
| Earnings for season of 1888 | 6,000 |
| No. 6, *Grace*, seized in 1887 : | |
| Claims for probable earnings in fall of 1887 | 2,000 |
| Claims for probable earnings in season of 1888 | 7,000 |
| No. 7, *Anna Beck*, seized in 1887 : | |
| Claims for probable earnings in coasting trade in fall of 1887 | 2,000 |
| For probable net earnings in season of 1888 | 6,000 |
| No. 8, *Dolphin*, seized in 1887 : | |
| Claims for probable earnings in fall of 1887 | 2,000 |
| Claims for probable net earnings in season of 1888 | 7,000 |
| No. 10, *Ada*, seized in 1887 : | |
| Probable earnings in fall of 1887 | 2,000 |
| Probable earnings for season of 1888 | 6,000 |
| Total | 71,200 |

These items it will be noticed are in addition to the items of "probable catch," or "estimated catch" for the seasons in which the respective vessels were seized.

Nothing can more fully illustrate the wholly speculative character of this class of claims than a consideration of these items in the light of the indisputable facts.

The *Carolina*, *Thornton*, *Onward*, *Grace*, *Anna Beck*, *Dolphin*, and *Ada* were seized and decrees of forfeiture rendered against them by the United States district court for the district of Alaska, and the *Carolina*, *Onward*, and *Thornton* were left to go to pieces in the harbor of Onalaska;[1] and the *Dolphin*, *Grace*, *Anna Beck*, and *Ada* were sold under decrees of that court, while the *Sayward* was released on a bond given by her owners a year or more after the decree of forfeiture was entered.

These seizures were in effect a conversion of these vessels at the time of the seizure, and, with the exception of the *Sayward*, their capacity to earn anything for their owners ended with the seizure. The measure of compensation to the owners was therefore the value of the property taken at the time it was taken, perhaps with interest from the time of taking. The owners were dispossessed by the seizure, and their interest in the property merged in their claim for compensation, if they have any such claim; and no claim can therefore accrue to them for the possible future earnings of the vessels.[2]

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[1] Declarations of James Douglas Warner, Case of Her Majesty's Government, Schedule of Claims, pp. 3, 6, 12.

[2] Sedgwick on Measure of Damages, 6th ed. 583; Conrad *v.* Pacific Insurance Company, 6 Peters U. S. 262–282; The Ann Caroline, 2 Wall., 22 U. S. 538; Smith *et. al. v.* Coudry, 1 How. U. S., 28–34; Wood's Mayne on Damages, 3 Eng. and 1st Am. ed., p. 486.

In Sutherland on Damages, vol. I, p. 173 (now a standard authority in the courts of the United States), the rule is stated as follows:

> The value of the property constitutes the measure or an element of damages in a great variety of cases both of tort and contract; and where there are no such aggravations as call for or justify exemplary damages, in actions in which such damages are recoverable, the value is ascertained and adopted as the measure of compensation for being deprived of the property, the same in actions of tort as in actions upon contract. In both cases the value is the legal and fixed measure of damages and not discretionary with the jury. * * * And, moreover, the value is fixed in each instance on similar considerations at the time when by the defendant's fault the loss culminates. (Grand Tower Co. *vs.* Phillips, 23 Wall., 471. Owen *vs.* Routh, 14 C. B., 327.)

To recapitulate: None of the items of these several claims for "estimated catch," or "probable catch," for the season or voyage in which the seizures took place can be considered, because they are in the nature of prospective profits, and fall within the rule adopted by the tribunal in the Alabama Claims, and the other authorities cited; and all the items for the probable earnings of these arrested vessels, subsequent to the seizure, fall within the same objection of uncertainty and contingency, and the further objection that the conversion of the property was completed by the seizure, and the owners' only remedy was for the value of the property so seized at the time of the seizure.

But, if the Tribunal for any reasons shall deem itself required to pass upon these items or find any facts involved therein, except that of their invalidity, we then briefly submit that the "estimated" and "probable catches" are altogether overstated and extravagant.

In the declaration of James Douglas Warren, in support of the claims in behalf of the alleged owner of the *Sayward*, *Anna Beck*, *Grace*, and *Dolphin*, he states that the estimate is made on the basis of three hundred and fifty skins taken by each boat and canoe for the full season.[1]

In the report of the British Commissioners, forming part of the British case,[2] it is shown that the average catch per canoe or boat for the British sealers for the same year was 164 seals, or less than one-half of Capt. Warren's average; and in the same paragraph, the British Commissioners say:

> The actual success of individual sealing vessels of course depends so largely upon the good fortune or good judgment which may enable them to fall in with and follow considerable bodies of seals, as well as

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[1] Case of Her Majesty's Government, Schedule of Claims, pp. 18, 22, 25, 29.

[2] Report of Br. Com., sec. 407, p. 74.

on the weather experienced, that the figures representing the catch compared to the boats or whole number of men employed constitute a more trustworthy criterion than any general statements.[1]

We may, therefore, safely say that if conjecture, based upon any rule of averages, is to be resorted to for the purpose of attempting to approximate the probable catches of these vessels, the British Commissioners have given far more reliable data than that furnished by these claimants.

The fallacy of these "estimates" is also shown in another way. We open the schedule of the British claims at random and take the claim growing out of the seizure of the *Minnie*, No. 19.[2] It seems, from the declaration accompanying the claim, that she left Victoria the fore part of May on a sealing voyage in the North Pacific Ocean and Bering Sea. She entered Bering Sea on the 27th of June, at which time she had caught 150 seals. She hunted seals in the Bering Sea until July 15, during which time she had taken 270 skins, which was at the rate of 15 skins per day. She was seized on the 15th of July; leaving her 16 days of July and 16 in August, making 32 days in all of her sealing season, during which time she would have caught, at the rate of 15 per day, 480 seals; to which adding the 420 she had taken previously, makes a total catch for the sealing season of 900; while her "estimated catch" is 2,500 seals for the season.

Take also the claim of the *Ada*, No. 10.[3] She entered Bering Sea, as is shown by the declaration accompanying the claim, about the 16th day of July, 1887, and continued sealing in the said sea until the 25th day of August, which was beyond the time when skins taken are considered merchantable,[4] and within two weeks of the time when, as the British Commissioners admit,[5] the sealing season closes, and yet her entire catch up to that time was only 1,876 skins, while the "estimated" or "probable catch" is put at 2,876.

The value and tonnage of these vessels is also largely overstated, as is shown by the tables submitted with the Counter Case of the United States,[6] and the value of several of the vessels seized was ascertained by sworn appraisers of the District Court of Alaska and shown to be much lower than the value stated in this schedule of claims.[7] That these appraisals were fair and showed the substantial and fair value of the property is evidenced by the fact that, although the owners of the vessels had the privilege of releasing them upon bonds, none of them, except the *Sayward*, were so released, although application was made to have their valuation reduced in order that the owners might give bonds.[1]

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[1] Report of Br. Com., p. 73, sec. 407.

[2] Case of Her Majesty's Government, Schedule of Claims, p. 56.

[3] *Ibid.*, p. 34.

[4] Counter Case of the United States, Appendix, pp. 357, 376, 384.

[5] Report of Br. Com., sec. 212.

[6] Counter Case of the United States, Appendix, pp. 339, *et seq.*

[7] *Ibid.*, pp. 329-38.

We might follow the analysis of different items of these claims and successfully show that they are all very much exaggerated, but do not deem it necessary to do so, because we feel sure the members of this Tribunal will take notice of the fact that individuals in making claims against a government, whether it be their own or a foreign government, invariably expand these claims to the largest amount their consciences will possibly tolerate.

H. W. Blodgett.

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[1] Senate Doc. 106, 50th Cong., Second Sess., pp. 28, 74.

## SIXTH.

### SUMMARY OF THE EVIDENCE.

To the end that the High Contracting Parties should become fully informed of all the facts bearing upon the differences between them, and as a right method of securing evidence as to those points touching which a dispute might exist, it was stipulated by Article IX of the Treaty that two Commissioners on the part of each Government should be appointed to make a joint investigation and to report, in order that such reports and recommendations might in due form be submitted to the Arbitrators, should the contingency therefor arise.

The Commissioners were duly appointed in compliance with this provision of the Treaty, and so far as they were able to agree, they made a joint report, which is to be found at page 307 of the Case of the United States. It will be seen from this joint report that the Commissioners were in thorough agreement that, for industrial as well as for other obvious reasons, it was incumbent *upon all nations, and particularly upon those having direct commercial interests in fur-seals, to provide for their proper protection and preservation.* They were also in accord as to the fact that since the Alaska purchase a marked diminution of the number of seals *on and habitually resorting to the Pribilof Islands* had taken place; that this diminution was cumulative in effect and was the result of excessive killing by man. Beyond this the Commissioners were unable, by reason of considerable difference of opinion on certain fundamental propositions, to join in a report, and they therefore agreed that their respective conclusions should be stated in several reports which, under the terms of the Treaty, might be submitted to their respective Governments.

The United States have submitted, with the report of their Commissioners, a voluminous mass of testimony which appears to have been elicited from all classes of persons who, by their education, residence, training, etc., might be enabled to give information of practical value and of a reliable character to the contracting governments. It has been the intention, in procuring evidence, to follow, as closely as the circumstances permitted, the principles and methods obtaining in both countries in litigation between private parties, and although it was not possible to produce each witness before a magistrate and tender him for cross-examination, in every instance the name, the residence, and the professsion or business of the witness has been given, and in every instance the witness has sworn to the truth of his deposition. This method may be favorably contrasted with the course which the Commissioners of Great Britain thought it incumbent upon or permissible for them to pursue. In very few instances have they seen fit to give the name of their informant or to place it in the power of the United States to test the reliability of the source from which they had derived their knowledge, real or supposed. But they have presented a great mass of statements of their own, evidently based in a great measure upon conjecture, much of it directly traceable to manifest partiality, and marked, to a singular degree, by the exhibition of prejudice against the one party and bias in favor of the other. The extent to which this has been carried must, in the eyes of all impartial persons, deprive it of all value as evidence.

How far counsel for the United States are justified in making this sweeping criticism upon the work of the British Commissioners will appear hereafter, when detailed attention is given to the result of their labors. The adoption of such a course is the more to be regretted as it was evidently the purpose and object of the British Government that an entirely different investigation should be carried out by its agents; nor had that Government hesitated to express its earnest desire that the *actual facts* should be given and that the investigation should be carried on with a strict impartiality. It is certain that the Commissioners were warned in clear language that "great care should be taken to sift the evidence that was brought before them." (See instructions to the British Commissioners, page 1 of their Report.)

In attempting to lay before this distinguished Tribunal the facts that may enlighten its judgment, the counsel for the United States propose to show what facts are established, substantially without controversy, and wherein their contention in case of difference is sustained by unmistakable preponderance of proof. For the purpose of facilitating the labors of this body, they propose to treat every topic of special importance separately and to produce the evidence which has a bearing upon the discussion of its merits.

## I.—The General Nature and Characteristics of the Fur-Seal.

It is unfortunate that even upon so familiar a subject and one so often treated as the seal, its nature, and habits, there should be a wide divergence between the American and British Commissioners. In fact, it would seem that the animal observed by the Commissioners from Great Britain was an entirely different animal from that considered and studied by the Commissioners appointed by the United States. This is the more remarkable because for more than a century a multitude of observers, scientists, government agents, and overseers have been giving their attention to the nature, habits, and life of the fur-bearing seal, the best method of protecting the animal from destruction, and the wisest course to secure an annual increase for the purposes of commerce; the reason for which the supply of these valuable creatures has diminished; the number of animals yearly killed, etc. They certainly by this time ought to have become fairly ascertained and known and to be placed beyond the reach of discussion or dispute, and so, in fact, they seem to be. There has been a general concurrence among the observers referred to, as complete as may be found among the same class of persons in relation to the nature and habits of ordinary domestic animals.

But it has become apparent that the British Commissioners have in their separate report thought fit to make an elaborate defense of the practice of pelagic sealing and to have imparted to their investigations and the formulation of their conclusions so strong a desire to protect the supposed interests of their people as to lead them to most extraordinary conclusions; indeed, this unfortunate result seemed almost inevitable, the premises upon which they started being conceded. To defend pelagic sealing, the main feature of which consists of slaughtering gravid females or nursing mothers, it was almost inevitable that some fundamental mistakes should be made as to the nature and habits of the animals and that statements should be adopted and theories advanced which, upon their face, are utterly unworthy of countenance or respect. The animal discovered by the British Commissioners might be defined to be a mammal essentially pelagic in its natural condition and which might be entirely so if it chose to be; an animal, too, which is gradually assuming that exclusive character. Coition takes place very frequently and more naturally in the water. It is a polygamous animal and when on land exhibits extreme jealousy to guard its harem, but whether this disposition is preserved and exhibited in the water, and how or whether this is a disappearing trait, does not appear. Two pups are not infrequently dropped at a birth, and the mothers, with a generous disregard for the ordinary rules of maternity in nature, suckle their own when it is convenient, but take up other pups indifferently, provided the strange offspring does not betray the odor of fresh milk. By this indiscriminate display of maternal instinct the generality of pups are supported until they are able to procure their own food. The loss of an individual mother becomes in consequence of this a matter of small moment, and, to make the peculiarity of the animal especially remarkable, it is said to abstain, during several weeks of the nursing period, from seeking food for itself and for the young offspring that would generally be supposed to drain its vitality. Such is the seal and such are the habits, especially of the females, as seen and described by the British Commissioners.

The expression of an opinion so directly in conflict with those generally received would seem to require the most cogent proofs. Reliable authorities should be cited and their names given. Hazardous conjectures should be wisely laid aside; ignorant, hasty, and prejudiced gossip should be treated as it deserves, and some effort made to reconcile individual observation with generally accepted and accredited facts.

The counsel for the United States have no hesitation in saying that if the question to be decided were one in which the common-law rules of evidence prevalent in both parties to the Treaty were applied, they would respectfully insist, with much confidence, that there is *no dispute* really as to the main facts in this case. A controversy as to facts in the juridical sense implies an assertion on the one side and a contradiction on the other; but contradictions can not be predicated on statements unauthenticated by proof and unsupported by general experience. It would suffice to show that the Report of the Commissioners from Great Britain simply presents the assertions and conjectures of gentlemen who, however respectable their character may be, were not called upon to express, and are not justified in laying down conclusions, except in so far as they have reached them by an examination into actual facts, the sources of which both Governments would be entitled to consider. Justice to the disputants, as well as a proper respect for the Tribunal, would seem to dictate this necessity of avoiding the rash expression of conjectures generally unsupported, but occasionally founded on other like conjectures emanating from ignorance and hasty observers whose names are not infrequently withheld.

It may, however, facilitate the learned Arbitrators in inquiries into the facts referred to, to indicate the nature of the evidence bearing upon the different points respectively and the places where it may be found. It is believed that nothing more is requisite. Of matters not in any manner drawn in question, little or no notice will be taken.

## II.—The Difference between the Alaskan and the Russian Fur-Seals.

The marked differences between the Alaskan and the Russian seals are such as to be plainly and readily discernible to persons familiar with the two herds and their characteristics. This once established would naturally prove that there is no commingling of the respective herds. But we are not left to inference upon this point, and may confidently claim that the proposition is affirmatively established by testimony respectable and creditable in itself, while it is wholly uncontradicted by proof.

This is the statement in the Case of the United States:

> The two great herds of fur-seals which frequent the Bering Sea and North Pacific Ocean and make their homes on the Pribilof Islands and Commander (Komandorski) Islands, respectively, are entirely distinct from each other. The difference between the two herds is so marked that an expert in handling and sorting seal skins can invariably distinguish an Alaskan skin from a Commander skin. In support of this we have abundant and most respectable testimony. Mr. Walter E. Martin, head of the London firm of C. W. Martin & Co., which has been for many years engaged in dressing and dyeing seal skins, describes the difference as follows: "The Copper Island (one of the Commander Islands) skins show that the animal is narrower in the neck and at the tail than the Alaska seal and the fur is shorter, particularly under the flippers, and the hair has a yellower tinge than the hairs of the Alaska seals."
>
> In this statement he is borne out by Snigeroff, a native chief on the Commander Islands and once resident on the Pribilof Islands.
>
> C. W. Price, for twenty years a dresser and examiner of raw seal-skins, describes the difference in the fur as being a little darker in the Commander skin. The latter skin is not so porous as the Alaskan skin, and is more difficult to unhair. The difference between the two classes of skins has been further recognized by those engaged in the seal-skin industry in their different market value, the Alaska skins always being held from 20 to 30 per cent more than the "Coppers" or Commander skins. This difference in value has also been recognized by the Russian Government.

### (A) THE HERDS ARE DIFFERENT.

Mr. George Bantle (p. 508, Appendix to Case of the United States, Vol. II), one of the witnesses upon this point, is a packer and sorter of raw fur-skins. He had been in that business, at the time of testifying, twenty years, and had handled many thousands of skins. He says:

> *I can tell by examining a skin whether* it was caught in season or out of season, *and whether it was caught on the Russian side or on the American side.* A Russian skin is generally coarser, and the under wool is generally darker and coarser, than the skins of seals caught on the American side. A Russian skin does not make as fine a skin as the skins of the seals caught on the American side, and are not worth as much in the market. I can easily distinguish one from the other.

Mr. H. S. Bevington, M. A. (*ibid.*, p. 551), a subject of Her Britannic Majesty, forty years of age, the head of the firm of Bevington and Morris, 28 Common street, in the city of London, was sworn and testified upon the subject. His testimony is interesting, and may be found at page 550, Volume II, of the Appendix to United States Case. Upon the subject of the variations observable, he says:

> That the differences between the three several sorts of skins last mentioned are so marked as to enable any person skilled in the business or accustomed to handle the same to readily distinguish the skins of one catch from those of another, especially in bulk, and it is the fact that when they reach the market the skins of each class come separately and are not found mingled with those belonging to the other classes. The skins of the Copper Island catch are distinguished from the skins of the Alaska and Northwest catch, which two last-mentioned classes of skins appear to be nearly allied to each other and are of the same general character, by reason of the fact that in their raw state the Copper skins are lighter in color than either of the other two, and in the dyed state there is a marked difference in the appearance of the fur of the Copper and the other two classes of skins. This difference is difficult to describe to a person unaccustomed to handle skins, but it is nevertheless clear and distinct to an expert, and may be generally described by saying that the Copper skins are of a close, short and shiny fur, particularly down by the flank, to a greater extent than the Alaska and Northwest skins.

Joseph Stanley-Brown (*ibid.*, p. 12) a geologist of distinction, residing at Mentor, Ohio, was commissioned by the Secretary of the Treasury to visit the Pribilof Islands for the purpose of studying the seal life found thereon; he spent one hundred and thirty days in actual investigation and study of the subject. While he does not claim to have become an expert in that time as to the various and distinguishing characteristics of the animals, he stated the result of his efforts to ascertain the truth in this respect:

> I learned that fur-seals of the species *Callorhinus ursinus* do breed and haul out at the Commander Islands and "Robben Reef," *but the statements made to me were unanimous* that they are a separate herd, the pelt of which is readily distinguished from that of the Pribilof herd, and that the two herds do not intermingle.

Isaac Liebes, a fur merchant of twenty-three years standing, residing at San Francisco, claims to have handled more raw fur-seal skins than any other individual in the United States or Canada and more than any firm or corporation except the lessees of the sealeries of the Pribilof and Commander Islands. His whole deposition, based as it is upon long practice and experience, may be read with profit. On the subject of the differences between the skins of animals belonging to the respective herds, he says (*ibid.*, p. 445.)

> The seals to which I have reference are known to myself and to the trade as the Northwest Coast seals, sometimes called "Victorias." *This herd belongs solely to the Pribilof Islands*, and is easily distinguishable by the fur from the fur-seals of the other northern rookeries, and still easier from those of the south. *All expert sealskin assorters are able to tell one from the other of either of these different herds. Each has its own characteristics and values.*

To the same effect is the deposition of Sidney Liebes, a fur dealer of San Francisco. He had been engaged in the fur business for the last six years at the time of testifying. He testified in substance, as did the other witnesses, as follows (*ibid.*, p. 516):

> My age is 22. I reside in San Francisco, and am by occupation a furrier, having been engaged in that business for the last six years. I have made it my business to examine raw seal-skins brought to this city for sale, and am familiar with the different kinds of seal-skins in the market. I can tell from an examination of a skin whether it has been caught on the Russian or American side. I have found that the Russian skins were flat and smaller, and somewhat different in color in the under wool, than those caught on the American side. In my opinion they are of an inferior quality. The Alaska skins are larger and the hair is much finer. The color of the under wool is also different. I have no difficulty in distinguishing one skin from the other. I am of opinion that they belong to an entirely separate and distinct herd. In my examination of skins offered for sale by sealing schooners I found that over 90 per cent were skins taken from females. The sides of the female skins are swollen, and are wider on the belly than those of males. The teats are very discernible on the females, and it can be plainly seen where the young have been suckling. The head of the female is also much narrower.

Mr. Thomas F. Morgan was the agent, in 1891, of the Russian Sealskin Company of Petersburg. Prior to that time he had been engaged in seal fishing; he resided several years, as agent of the Alaska Commercial Company, on the Pribilof Islands. His long and varied experience fitted him in an especial manner to testify intelligently on the subject. He says (*ibid.*, p. 61):

> *The Alaska fur-seal breeds, I am thoroughly convinced, only upon the Pribilof Islands;* that I have been on the Alaska coast and also along the Aleutian Islands; that at no points have I ever observed seals haul out on land except at the Pribilof Islands, nor have I been able to obtain any authentic information which causes me to believe such is the case.
>
> The Alaska fur-seal is migratory, leaving the Pribilof Islands in the early winter, going southward into the Pacific and returning again in May, June, and July to said islands. I have observed certain bull seals return year after year to the same place on the rookeries, and I have been informed by natives that have lived on the islands that this is a well-known fact and has been observed by them so often that they stated it as an absolute fact.

It is also interesting to note, from his supplemental sworn statement, that the British Commissioners had *some* testimony to show that there was no identity between the herds (*ibid.*, p. 201):

> I was on the Bering Island at the same time that Sir George Baden-Powell and Dr. George M. Dawson, the British representatives of the Bering Sea Joint Commission, were upon said island investigating the Russian sealeries upon the Komandorski Islands; that I was present at an examination, which said Commissioners held, of Sniegeroff, the chief of the natives on the Bering Island, who, prior to the cession of the Pribilof Islands by Russia to the United States, had resided on St. Paul, one of the said Pribilof Islands, and that since that time had been a resident on said Bering Island, and during the latter part of said residence had occupied the position of native chief, and as such, superintended the taking and killing of fur-seals on said Bering Island; that during said examination the Commissioners, through an interpreter, asked said Sniegeroff if there was any difference between the seals found on the Pribilof Islands and the seals found on the Komandorski Islands; that said Sniegeroff at once replied that there was a difference, and on further questioning stated that such difference consisted in the fact that the Komandorski Island seals were a slimmer animal in the neck and flank than the Pribilof Island seals; and further, that both hair and fur of the Komandorski Island seal were longer than the Pribilof Island seal; said Commissioners asked said Sniegeroff the further question whether he believed that the Pribilof herd and Komandorski herd ever mingled, and he replied that he did not.

Mr. John N. Lofstad (*ibid.*, p. 516), a fur merchant of San Francisco, testifies that he can easily distinguish the Copper Island seal in its undressed state from that of the Alaskan and Northwest Coast skins. They are of an entirely distinct and separate herd, while those of the Northwest Coast and Pribilof Islands are of the same variety. He says:

> I have been in the business for twenty-eight years during which time I have bought large numbers of dressed and undressed fur skins, and I am thoroughly familiar with the business. I can easily distinguish the Copper Island fur-sealskin in its undressed state from that of the Alaskan and Northwest Coast skins. They are of an entirely distinct and separate herd, while those of the Northwest Coast and Pribilof Islands are of the same variety.

To the same effect Mr. Gustave Niebaum (*ibid.*, p. 78), Mr. Niebaum's experience was such as to entitle him to speak as an expert. His opportunities to inform himself thoroughly on all matters connected with sealeries were of the best, and at the same time he had no interest whatever in the sealeries or the seal-skin trade. He is a native of Finland and became an American citizen by the transfer of Alaska to the United States. He was vice-consul of Russia at San Francisco from 1880 to 1891. He says:

> I was formerly, as I have stated, interested in the Commander seal islands, as well as those of Alaska. The two herds are separate and distinct, the fur being of different quality and appearance. The two classes of skins have always been held at different values in the London market, the Alaskan bringing invariably a higher price than the Siberian of the same weight and size of skins. I think each herd keeps upon its own feeding grounds along the respective coasts they inhabit.

It may be unnecessary—as it would certainly be monotonous—to multiply citations. Other witnesses, however, testify to the same effect. The American Commissioners have given their names and addresses, as well as their sworn statements. The Arbitrators will, therefore, be enabled to determine whether or not the evidence is, as we claim that it is, absolutely conclusive. In a court of law, such a concensus of opinion and statement made under the sanction of an oath and uncontradicted, save by more or less ingenious but unsustained conjecture, would satisfy the judgment of the most exacting judge. Other depositions equally important may be quoted in addition to the above.

Mr. Walter E. Martin (*ibid.*, p. 569), was, at the time of giving his testimony, a subject of Her Majesty, residing at the city of St. Albans. He had been engaged, on a very large scale, in the business of dressing and dyeing sealskins. He says that if one thousand Copper Island skins were mingled among ninety-nine thousand Alaska skins, it would be possible for any one skilled in the business to extract nine hundred and fifty of the Copper Island skins and to separate them from the ninety-nine thousand and fifty of the Alaska catch, and *vice versa*.

Mr. N. B. Miller (*ibid.*, p. 199). Mr. Miller was at the time of testifying an assistant in the scientific department of the United States Fish Commission steamer *Albatross*. He had made five cruises in Alaskan waters; he says:

> The seals of the Commander Islands are grayer in color and of a slighter build throughout the body. The bulls have not such heavy manes or fur capes, the hair on the shoulders being much shorter and not nearly so thick. The younger seals have longer and more slender necks apparently. I noticed this difference between the seals at once.

Mr. John J. Phelan (*ibid.*, p. 518) was a citizen of the United States and a resident of Albany, N. Y. He was 35 years of age at the time of giving his deposition, and since the age of eleven had been in the fur business. His practical and active experience was very large during those twenty-three years. He had noticed the difference in the seals, both in their raw state and during the processes of dressing. He explained minutely the point of difference.

Mr. Henry Poland (*ibid.*, p. 570) was a subject of Her Majesty and the head of the firm of P. R. Poland & Son, doing business at 110 Queen Victoria street, in the city of London. The firm of which he was a member had been engaged in the business of furs and skins for upwards of one hundred years, having been founded by his great-grandfather in the year 1785. His judgment, evidently, is entitled to great respect. He corroborates the other witnesses, and says that the three classes of skins are easily distinguishable from each other by any person skilled in the business. He had personally handled the samples of the skins dealt in by his firm, and would have no difficulty in distinguishing them. In fact, the skins of each of the three classes have different values and command different prices in the market.

Mr. Charles W. Price (*ibid.*, p. 521) is a very expert examiner of raw fur-skins, of San Francisco. He had been engaged in the business twenty years when he was examined by the Commissioners of the United States; he had had a large practical experience. He gives the points of difference between the Russian and American skins, and states, as did Mr. Poland and other witnesses, that the seals on the Russian side are a distinct and different herd from those on the American side, and are not as valuable.

Mr. George Rice (*ibid.*, p. 572) is another witness whose testimony should command respect. He was fifty years of age and a subject of Her Majesty. He had been engaged actively in the business handling fur-seal skins for twenty-seven years and had acquired a general and detailed knowledge of the different kinds of fur-seal skins and of the differences which distinguish them, as well as the history, character, and manner of conducting the fur-seal sealskin business in the city of London. He says that the differences between the several classes of skins are *very marked*, which enable anybody who is skilled in the business to distinguish the skins of one class from the skins which belong to either of the other classes. He also stated, as did the other experts, that these differences are evidenced by the fact that the skins obtain different prices in the market. The testimony of this gentleman deserves special attention; it is intelligently given and is very instructive.

Mr. Leon Sloss (*ibid.*, p. 90) is a native of California and a resident of San Francisco. He was for several years a director of the Alaska Commercial Company, and a member of the partnership of Louis Sloss & Co., and had been engaged for fifteen years in dealing in wools, hides, and fur-skins. At the time of testifying he had no interest in seals or sealeries. He had been superintendent of the Alaska sealeries *pro tempore* from 1882 to 1885, inclusive, and spent the sealing season of those three years on the Pribilof Islands in the personal management of the business. He became acquainted, as he testifies, with every aspect of the business. All advices from the London agents and information in regard to the sealskin market, from all sources, passed through his hands, and instructions to agents of the company in regard to the classes of skins desired emanated from time to time from him. He was emphatic in his statement that the difference between the Northern and Southern skins that came to the port of San Francisco could be detected at once. While it was not as easy to distinguish the Alaskan from the Asiatic skins, experts in handling them do it with *unerring accuracy*.

Mr. William C. B. Stamp (*ibid.*, p. 574) was 51 years of age at the time of testifying, and a subject of Her Majesty. He was engaged in the business at 38 Knightrider street, London, E. C., as a fur-skin merchant. He had been engaged in that business for over thirty years and had personally handled many thousand of fur-seal skins, besides inspecting samples at practically every sale of fur skins made in London during the whole of the time he had been in business. He had thus acquired a general and detailed knowledge of the history of the business and of the character and differences which distinguish the several kinds of skins on the market. He stated it as his judgment that the skins of the several catches are readily distinguishable from each other, and the skins of the different sexes may be as readily distinguished as the skins of the different sexes of any other animal. He added that the difference between the skins of the three catches are so marked that they have always been expressed in the different prices obtained for the skins. He instances the sales on the list, which were as follows: For the Alaska skins, 125 shillings per skin; for the Copper skins, 68 shillings per skin; and for the Northwest, 53 shillings per skin.

Emil Teichmann (*ibid.*, p. 576), was by birth a subject of the Kingdom of Wurtemburg, and had become a naturalized citizen of Her Majesty from the time of reaching his manhood. He was 46 years of age at the time of testifying. He had been engaged in the fur business since 1868, and had resided in England and done business in London. From 1873 to 1880 he had been a member of the firm of Martin & Teichmann, who were then, as its successors, C. W. Martin & Son still are, the largest dressers and dryers of sealskins in the world. He had *personally handled many hundreds of thousands of fur-seal skins* and claimed to be, as well he might, an expert on the subject of the various kinds of such skins. His testimony is minute and gives details as to the peculiarities which distinguish the skins. He states that all those differences are so marked as to enable any expert readily to distinguish Copper from Alaska skins, or *vice versa*, although he adds that in the case of very young animals the differences are much less marked than in the case of adults.

George H. Treadwell (*ibid.*, p. 523), at the time of testifying, was 55 years of age. He was a citizen of the United States and a resident of Albany County, in the State of New York. His father, George C. Treadwell, in 1832, started a wholesale fur business of a general character, and his son, the witness, became associated with him in 1858, and upon his death, which occurred in 1885, he succeeded to the business. That business is now conducted under the name of The George C. Treadwell Company, a corporation formed under the laws of the State of New Jersey, of which corporation the deponent is president. He entirely agrees with what Mr. Phelan says concerning his experience in the handling and dressing of skins, and from what he knows of his character and ability he believes that everything stated by him in his affidavit is correct.

Henry Treadwell (*ibid.*, p. 524), at the time of testifying, was 70 years of age, and resided in the city of Brooklyn, in the State of New York. He was a member of the firm of Treadwell & Company, which had been dealing in furs since 1832; they bought, dressed and dyed annually from 5,000 to 8,000 skins. Mr. Treadwell was very emphatic in his statement that the skins of the three catches are readily distinguishable. He stated that he would be able, himself, on an examination of the skins as they are taken from the barrels, to detect at once in a barrel of Alaska skins the skins of either the Copper or the northwestern catch.

William H. Williams (*ibid.*, p. 93) is a citizen of the United States, residing at Wellington, Ohio, and was at the time of testifying the United States Treasury Agent in the charge of the seal islands in Bering Sea. As such and in pursuance of Department instructions, he made a careful examination of the habits and conditions of the seals and seal rookeries, with a view of reporting to the Department his observations. He says, agreeing in this with the numerous other witnesses whose testimony is above given, that the skins of the three catches are readily distinguishable from each other. He also states that the differences are clearly evinced in the prices which have always been obtained for the sealskins of the three catches. For instance, the skins of the Alaska catch were then commanding 20 or 30 per cent better prices than the skins of the Copper catch. This difference is also recognized by the Russian Government, who leased the privilege of catching upon the Commander Islands upon terms 25 per cent less than the terms of the United States for the leased catch upon the Pribilof Islands.

Mr. Maurice Windmiller (*ibid.*, p. 550) was a furrier doing business in San Francisco, in which business he had been engaged all his life, his father having been a furrier before him. He was 46 years of age and claimed to be an expert in dressed and undressed, raw and made-up furs, and a manufacturer and dealer in the same. He was also of opinion that the Russian seal belonged to an entirely different herd from those of the American side, and testified that their skins had such peculiar characteristics that it was not difficult to separate them.

### (B) THE ALASKAN DOES NOT MINGLE WITH THE RUSSIAN HERD.

The statement in the Case (p. 96) is in the following words:

> The Commander Islands herd is evidently distinct and separate from the Pribilof Islands herd. [Its home is the Commander group of islands on the western side of Bering Sea, and its line of migration is westward and southward along the Asiatic coast.] To suppose that the two herds mingle and that the same animal may at one time be a member of one herd and at another time of the other is contrary to what is known of the habit of migrating animals in general.

This statement is based on the report of the American Commissioners (page 323 of the Case of the United States), which report states the conclusion reached by them in the following language:

> The fur-seals of the Pribilof Islands do not mix with those of the Commander and Kurile Islands at any time of the year. In summer, the two herds remain entirely distinct, separated by a water interval of several hundred miles, and in their winter migrations those from the Pribilof Islands follow the American coast in a southeasterly direction, while those from the Commander and Kurile Islands follow the Siberian and Japan coasts in a southwesterly direction, the two herds being separated in winter by a water interval of several thousand miles. This regularity in the different herds is in obedience to the well-known law *that migratory animals follow definite routes in migration and return year after year to the same places to breed.* Were it not for this law, there would be no such thing as stability of species, for interbreeding and existence under diverse physiographic conditions would destroy all specific characters.

The testimony in support of this proposition seems to be conclusive and certainly must stand until the learned counsel for the Government of Her Majesty succeed in producing the evidence of witnesses who are able and willing to express a different view.

It can not be expected that the witnesses shall speak in the same positive and unqualified manner upon this matter, which, to some extent, must be predicated upon conclusions drawn from facts, as they would and do upon the actual and observable differences between the two families of seals. But it will be found that the testimony is the best obtainable under the circumstances and can leave no reasonable doubt in the minds of impartial persons that the two herds are distinct, that they follow definite routes in migration, and that they return year after year to the same place to breed and never intermingle.

Mr. John G. Blair (Appendix to Case of the United States, Vol. II, p. 193) was at the time of deposing an American citizen, 57 years of age, and had been for fourteen years previous and until recently master of the schooner *Leon*, then employed by the Russian Sealskin Company. He had been constantly engaged in the fur-sealing industry and was familiar with the habits of these animals, both on the land and in the water. He was in charge of and attended to the killing of seals on Robben Island for the lessees from 1878 to 1885, taking from 1,000 to 4,000 seals per annum. With the exception of two years, when he was sealing on the Commander Islands, he had visited Robben Island every year from 1878 to 1885. His testimony upon this point is as follows:

> I am told and believe that the Robben Island seals can be distinguished by experts from those on the Commander Islands, and am satisfied that they do not mingle with them and are a separate and distinct herd. They remain on and about the islands in large numbers until late in the fall. I have been accustomed to leave in October or early November, and seals were always plentiful at that time. I am of opinion that they do not migrate to any great distance from the island during the winter. A few hundred young pups are caught every winter by the Japanese in nets off the north end of Yesso Island. I have made thirty-two voyages between the Aleutian Archipelago and the Commander Islands, but have never seen seals between about longitude 170 west and 165 east. I am satisfied that Alaska seals do not mix with those of Siberia. I have seen seals in winter and known of their being caught upon the Asiatic side as far south as 36 north latitude.

William H. Brennan (*ibid.*, p. 358): Mr. Brennan, at the time of testifying, resided at Seattle, in the State of Washington. He was an English subject by birth and had spent the best part of his life in the close study of the inhabitants of the sea, including seals and the modes of capturing them. He had passed his examination as second mate in London in 1874, and had been to Australia, China, and Japan. In the last country he had remained several years. Since that time he has followed the sea as sailing captain, pilot, and quartermaster on vessels sailing out of Victoria, British Columbia. He testified as follows:

> In my opinion, fur-seals born on the Copper, Bering, or Robben islands will naturally return to the rookery at which they were born. The same thing is true of those born on the St. Paul or St. George islands. No vessel, to my knowledge, has ever met a band of seals in midocean in the North Pacific. I have crossed said water on three different occasions, and each time kept a close lookout for them. The greater part of the seals that we find in the North Pacific Ocean are born on the islands in Bering Sea. Most of them leave there in October and November.

C. H. Anderson (*ibid.*, p. 205): Mr. Anderson was a master mariner by occupation, residing in San Francisco, and had been sailing in Alaskan waters since 1880. He says:

> I think the Commander Islands seals are a different body of seals altogether from those of the Pribilofs, and that the two herds never mingle. I think the Commander Islands herd goes to the southward and westward toward the Japanese coast. I never knew of fur-seals hauling out to rest or breed at any place in the Aleutian chain, or anywhere, in fact, except the well-known rookeries of the several seal islands of Bering Sea.

Charles Bryant (*ibid.*, p. 4): Mr. Bryant, at the time of testifying, was 72 years of age and had resided in Plymouth County, Massachusetts. From 1840 to 1858 he had been engaged in whaling in the North Pacific Ocean or Bering Sea. During the latter portion of the time he commanded a whaling vessel. In 1868 he was appointed as Special Treasury Agent to go to the Pribilof Islands to investigate and to report as to the habits of the fur-seal, the conditions of the islands and the most advantageous plan to adopt for the government and management of the same. He remained on St. Paul Island from March, 1869, to September of that year. He returned July, 1870, and remained until the fall of 1871. Then in April, in 1872, he again arrived on St. Paul Island as Special Agent of the Treasury Department in charge of the seal islands, and he spent there the sealing seasons from 1872 to 1877, inclusive, and three winters, namely, 1872, 1874, and 1876, since which time he has lived in retirement at Mattapoisett, Plymouth county, Massachusetts. His testimony upon this point is as follows:

> *The Alaska fur-seal breeds nowhere except on the islands.* I took particular care in investigating the question of what became of the seal herd while absent from the islands. My inquiries were made among the Alaskan Indians, half-breeds, Aleuts, and fur-traders along the Northwest Coast and Aleutian Islands. One man, who had been a trapper for many years along the coast, stated to me that in all his experience he never knew of but one case where seals had hauled out on the Pacific coast, and that was when four or five landed on Queen Charlotte Island. This is the only case I ever heard of seals coming ashore at any other place on the American side of the Pacific, except the Pribilof Islands. These seals are migratory, leaving the islands in the early winter and returning again in the spring. The Pribilof herd does not mingle with the herd located on the Commander Island. This I know from the fact that the herd goes eastward after entering the Pacific Ocean, and from questioning natives and half-breeds, who have resided in Kamschatka as employés of the Russian Fur Company, I learned that the Commander herd on leaving their island go south-westward into the Okhotsk Sea and the waters to the southward of it and winter there. This fact was further verified by whalers who find them there in the early spring.
>
> The Alaskan seals make their home on the Pribilof Islands because they need for the period they spend on land a peculiarly cool, moist, and cloudy climate, with very little sunshine or heavy rains. This peculiarity of climate is only to be found on the Pribilof and Commander

> islands, and during my long experience in the North Pacific and Bering Sea I never found another locality which possessed these conditions so favorable to seal life. Add to this fact the isolated condition of the seal islands and we can readily see why the seal selected this home.

Mr. Alfred Fraser (*ibid.*, pp. 554, 558) is another witness to whose testimony exceptional importance should be attached. He was of opinion that the herds from which skins are obtained do not in fact intermingle with each other, because the skins classified under the head of Copper catch are not found among the consignment of skins received from the Alaska catch, and *vice versa.* His testimony is quoted at some length, and is as follows:

> That he is a subject of Her Britannic Majesty and is 52 years of age and resides in the city of Brooklyn, in the State of New York. That he is a member of the firm of C. M. Lampson & Co., of London, and has been a member of said firm for about thirteen years; prior to that time he was in the employ of said firm and took an active part in the management of the business of said firm in London. That the business of C. M. Lampson & Co. is that of merchants, engaged principally in the business of selling skins on commission That for about twenty-four years the firm of C. M. Lampson & Co have sold the great majority of the whole number of sealskins sold in all the markets of the world. That while he was engaged in the management of the business of said firm in London, he had personal knowledge of the character of the various sealskins sold by the said firm, from his personal inspection of the same in their warehouse and from the physical handling of the same by him. That many hundred thousands of the skins sold by C. M. Lampson & Co. have physically passed through his hands; and that since his residence in this country he has, as a member of said firm, had a general and detailed knowledge of the character and extent of the business of said firm, although since his residence in the city of New York he has not physically handled the skins disposed of by his firm.
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> * * * * * * *
>
> Deponent is further of the opinion, from his long observation and handling of the skins of the several catches, that the skins of the Alaska and Copper catches are readily distinguishable from each other, and that the herds from which such skins are obtained do not in fact intermingle with each other because the skins classified under the head of Copper catch are not found among the consignments of skins received from the Alaska catch, and *vice versa.*
>
> Deponent further says that the distinction between the skins of the several catches is so marked that in his judgment he would, for instance, have had no difficulty, had there been included among 100,000 skins in the Alaska catch 1,000 skins of the Copper catch, in distinguishing the 1,000 Copper skins and separating them from the 99,000 Alaska skins, or that any other person with equal or less experience in the handling of skins would be equally able to distinguish them. And in the same way deponent thinks, from his own personal experience in handling skins, that he would have no difficulty whatever in separating the skins

of the Northwest catch from the skins of the Alaska catch by reason of the fact that they are the skins almost exclusively of females, and also that the fur upon the bearing female seals is much thinner than upon the skin of the male seals, the skin of the animal while pregnant being extended and the fur extended over a large area.

Charles J. Hague (*ibid.*, p. 207): Capt. Hague is a citizen of the United States and a master mariner by occupation. He had cruised steadily in Alaskan waters since the year 1878. He had sailed principally about the various parts of the Aleutian Islands, as far west as Attu, to which island he had made about twenty trips from Unalaska, principally in the spring and fall of the year. This is his testimony upon the point now under consideration:

> The main body of the fur-seal herd bound to and from the Pribilof Islands move through the passes of the Fox Islands, Unimak on the east and the West Pass of Unmak on the west, being the limits between which they enter Behring Sea in any number. I do not know through what passes the different categories move or the times of their movements. Rarely see fur-seals in the Pacific between San Francisco and the immediate vicinity of the passes. I think the fur-seal herds of the Commander and Pribilof Islands are separate bodies of the fur-seal species, whose numbers do not mingle with each other. In the latter part of September, 1867, in the brig *Kentucky*, making passage between Petropaulowski and Kodiak, I observed the Commander Islands seal herd on its way from the rookeries. They moved in a compact mass or school, after the manner of herring, and were making a westerly course towards the Kurile Islands. The seals which I have observed on their way to the Pribilof Islands do not move in large schools; they struggle along a few at a time in a sort of a stream and are often seen sleeping in the water and playing. There are no fur-seal rookeries in the Aleutian Islands that I know of; in fact, I have never heard of any in the region besides those on the several well-known Seal Islands of Bering Sea.

H. Harmsen (*ibid.*, p. 442): Capt. Harmsen had been the master of a ship since 1880 and engaged in the business of hunting seals in the Pacific and Bering Sea since 1877. The following is an abstract from his testimony:

> Q. In your opinion, do the seals on the Russian side intermingle with those on the Pacific side or are they a separate herd?—A. No, sir; they do not come over this way. They are not a different breed, but they keep over by themselves; at least I don't think so. They follow their own stream along there. There is so much water there where there are seals, and so much where there are not. They are by themselves.

Samuel Kahoorof (*ibid.*, p. 214): Kahoorof is a native of Attu Island, 52 years of age, and a hunter of the sea otter and blue fox. He had lived in the same place all his life. We extract that part of his testimony which bears upon the question now under immediate consideration:

> Have seen only three fur-seals in this region in twenty years. Saw them in May, 1890, traveling along the north side of Attu Island, about 5 miles off shore, and making a northwesterly course. They were young males, I think. Fur-seals do not regularly visit these islands now, but about twenty-five or thirty years ago I used to see small squads of large seals during the month of June feeding and sleeping about the kelp patches off the eastern shores of Attu and Agattu Islands. They came from the southward and traveled in a northwesterly direction. Never saw any fur-seals east of the Semichi Islands and do not think that those of the Commander Islands herd go farther to the eastward than that. They decreased in numbers gradually, and during the last twenty years I have only seen the three above mentioned. Have never seen a nursing or mother cow or black or gray pup in this region, and do not think they ever visit it.

John Malowansky (*ibid.*, p. 198): Mr. Malowansky is a resident of San Francisco, an American citizen, but a Russian by birth. He was, at the time of testifying, a merchant by profession and an agent for the Russian Sealskin Company. He resided on the Commander Islands in 1869, 1870, and 1871, and was then engaged in the sealing business. He was there again in 1887, as agent of the company. He formerly lived in Kamtchatka and frequently visited the Commander Islands between 1871 and 1887. He was an expert in all matters relating to the fur-seal trade, especially on the Russian side of the Bering Sea. The following is an extract from his testimony:

> The seals of the Commander Islands are of a different variety from those of the Pribilofs. The fur is not so thick and bright and is of a somewhat inferior quality. They form a distinct herd from that of St. Paul and St. George, and in my opinion the two do not intermingle.
>
> I was present as interpreter when the English Commissioners were taking testimony on Bering Island. They examined among others, when I was present, Jefim Snigeroff, Chief of Bering Island, he being the person selected by them there from which to procure the testimony relating to the habits and killing of seals. This Snigeroff testified that he had lived on the Pribilof Islands for many years and knew the distinctive characteristics of both herds (Commander and Pribilof) and their habits and that he removed from thence to Bering Island. He pointed out that the two herds have several different characteristics and stated that in his belief they do not intermingle.

Filaret Prokopief (*ibid.*, p. 216): Prokopief is a native of Attu Island, 23 years of age, and the agent and storekeeper at that place of the Alaska Commercial Company. His occupation was that of hunter for sea-otter and fox, but never for fur-seal. This occupation he pursued until the time when he was made agent. His hunting ground was Attu, Agattu, and the Semichi Islands. This is his testimony:

> I never saw but one fur-seal in the water. It was a young male which was killed in this bay in September, 1884. I do not know of any fur-seal rookery or other places where fur-seals haul out on the land to breed or rest in the Aleutian Islands, nor where the old bull fur-seals spend the winter. I do not know at what time or by what routes the seal herds move to and from the Bering Sea; have heard old hunters say the Commander Islands herd used to pass close to the western shores of these islands on their way north.

Eliah Prokopief (*ibid.*, p. 215) is a native of Amchitka Island of the Aleutian chain; 52 years of age; had been a hunter all his life, but had never hunted or killed a fur-seal. His hunting ground was about Attu, Agattu, and the Semichi Islands. His testimony is as follows:

> Fur-seals do not regularly frequent these regions, and I have seen none but a few scattering ones in twenty years. Thirty years ago, when the Russians controlled these islands, I used to see a few medium-sized fur-seals, one or two at a time, in the summer, generally in June, traveling to the northwest, and bound, I think, for the Commander Islands. The farthest east I have ever seen them was about 30 miles east of the Semichi Islands; do not think those going to the Commander Islands ever go farther east than that. Those most seen in former times were generally feeding and sleeping about the kelp patches between Attu and Agattu, and the Semichi Islands, where the mackerel abounds. They decreased in numbers constantly, and now are only seen on very rare occasions. Have seen but half a dozen in the last twenty years; they were large seals—bulls, I judged from their size—traveling to the northwest, about 30 miles east of the Semichi Islands. This was in May, 1888.
>
> Have never seen any pups, black or gray, or nursing female seals in this region, and do not think they ever visit it. Do not know of any rookeries in the Aleutian Islands, nor any places where fur-seals haul out regularly on the land or kelp to breed or rest except the Russian and American seal islands of Bering Sea. Do not know where the old bull fur-seals spend the winter, nor what route the fur-seal herds take to and from the Commander and Pribilof Islands, nor at what times the herds pass to and from. Am quite sure the herds do not come near enough together to mingle in these regions. Have never known of fur-seals being seen between Amchitka and a point 30 miles east of the Semichi Islands. Do not think there are now as many fur-seals as there were thirty years ago, but do not know the cause of the decrease. Sealing schooners do not regularly visit these islands. Last August (1891) three of them came in here to get water, but only stayed a few hours each; they had been to the Commander Islands and were going south.

Gustave Niebaum (*ibid.*, p. 202): The testimony of Mr. Niebaum has been cited above and his qualifications given. Upon the subject of the alleged or possible commingling of the different herds, he says (*ibid.*, p. 204):

> I am satisfied that the seal herds respectively upon the Pribilof group, the Commander Islands and Robben Bank, have each their

> own distinctive feeding grounds and peculiar grounds of migration. No doubt they are of the same species, but there is a marked difference in the fur of the skins from the respective places, which can be distinguished by experts.

C. A. Williams (*ibid.*, p. 535): Mr. Williams is a citizen of the United States, a resident of the city of New London, in the State of Connecticut, and was at the time of testifying 63 years of age. He had been largely engaged for a period of upwards of forty years in the whaling and sealing business, in which he had employed upward of twenty-five vessels. He says that there is no intermingling of the herds.

The testimony of Alexander McLean (*ibid.*, p. 436) is to the same effect. Mr. McLean is a master mariner and had been engaged for ten years, at the time of making his deposition, in the business of hunting seals in the Pacific or Bering Sea.

To the like effect is the testimony of Daniel McLean (*ibid.*, p. 443). He, too, is a master mariner, and is of opinion that the Russian and Alaskan herds are different herds of seals altogether. His testimony is as follows:

> Q. In your opinion, do the seals on the Russian side intermingle with those on the Pacific side? A. No, sir; I do not think so. They are different seals in my opinion.

It is only just to add that the British Commissioners virtually make the admission that these herds are separate and distinct, although the inference may be drawn, from some of their statements, leading to a contrary conclusion, when the practical question arises in connection with an appreciable difference in the value of skins.

Thus, for instance, the suggestion is made of a *probability* in the future, in a course of years, that a continued "harassing" of one group might result in a corresponding gradual accession to the other, by which it is no doubt intended to convey the idea that unless the killing on the Pribilof Islands is discontinued the seals will migrate and adopt a Russian domicile (Sec. 453).

But the same paragraph admits that "the fur-seals of the two sides of the North Pacific belong in the main to practically distinct migration tracts." They add that it is not believed that any voluntary or systematic movement of fur-seals takes place from one group of breeding islands to the other (Sec. 453). See also section 198 of British Commissioners' report, that "while there *is every reason to believe* that the seals become more or less commingled in Behring Sea during the summer [a purely gratuitous assumption], the migration routes of the two sides of the North Pacific are essentially distinct." (See also Secs. 170, 198, 216, 220.)

Without any evidence, then, on the side of the United States, it might be asserted, on the Report of the British Commissioners alone, that any intermingling of the two herds is abnormal and exceptional, although these gentlemen are inclined to think that in the remote future this separation may disappear.

### (C) THE ALASKAN FUR-SEALS HAVE BUT ONE HOME, NAMELY, THE PRIBILOF ISLANDS. THEY NEVER LEAVE THIS HOME WITHOUT THE ANIMUM REVERTENDI, AND ARE NEVER SEEN ASHORE EXCEPT ON THOSE ISLANDS.

The testimony as to this fact is uncontradicted except by the curious and utterly unsupported statement of the British Commissioners that the animals actually enjoy and occupy two homes; that is, they have a winter domicile, which is not given except by a vague and general designation (British Commissioners' Report, Sec. 27), and a summer place of resort, which is the Pribilof Islands. *There is no pretense that they ever land elsewhere.* The force of this original suggestion of a double residence would be much increased if the slightest indication were given to enable us to test the accuracy and to aid the Commissioners in satisfying the world of scientists that a grave error has heretofore been committed and continuously accepted. But as we are endeavoring to treat the assertion as seriously and respectfully as possible, we submit that in the face of absolute and uncontradicted proof, corroborated by general scientific experience, we are not bound to devote any considerable space to the demonstration that the fact must be taken to be as we have stated it.

In fairness to the Commissioners for Great Britain, it may be proper to call attention to their own language, noting, however, the singular process by which they make the migration of the seals commence *at an uncertain point in the Pacific* to reach their well-established home and place of nativity in the north.

The absurdity chargeable upon the British Commissioners of thus beginning at an uncertain point to reach a certain one is shown by Capt. Scammon, who has been an officer in the United States Revenue-Marine Service since 1863. Mr. Scammon is also the author of the work entitled "The Marine Mammals of the Northwestern Coast of North America," published by J. H. Carmany & Co., San Francisco, 1874. He says:

> The certainty that the seals caught in the North Pacific are in fact a portion of the Pribilof herd, and that all are born, and reared for the first few months, upon the islands of that group, naturally leads the observer to regard them as quite domesticated, and belonging upon their island home. *The more orderly way to describe them, therefore*, would be to *commence with their birth upon the island* and the beginning of their migrations, rather than at the end of some one of their annual rounds away from home.

We now quote the language of the Report of the British Commissioners:

> The fur-seal of the North Pacific Ocean is an animal in its nature *essentially pelagic*, which, during the *greater part of each year*, has no occasion to seek the land and very rarely does so. *For some portion of the year, however*, it *naturally* resorts to certain littoral breeding places, *where the young are brought forth and suckled on land*. It is gregarious in habit, and, though seldom found in defined schools or compact bodies at sea, congregates in large numbers at the breeding places. (Sec. 26.)

Then they describe the migrations and continue:

> The fur-seal of the North Pacific may thus be said, in each case, to have two habitats or homes between which it migrates, both equally necessary to its existence, under present circumstances, the one frequented in summer, the other during the winter.

Unless the vast expanse of sea between the Aleutian Islands and California may be considered a *winter habitat*, it is difficult to see upon what foundation these gentlemen have felt justified in making the statement of a double home. The object of such an argumentative assertion is too plain to require consideration, at least in connection with this point.

The truth upon this question of habitat or home is as stated by the American Commissioners in their report. They use the following language:

> The Pribilof Islands are the home of the Alaskan fur-seal (Callorhinus ursinus). They are peculiarly adapted, by reason of their isolation and climate, for seal life, and because of this peculiar adaptability were undoubtedly chosen by the seals for their habitation. The climatic conditions are especially favorable. The seal, while on land, needs a cool, moist, and cloudy climate, sunshine and warmth producing a very injurious effect upon the animals. These requisite phenomena are found at the Pribilof Islands, and nowhere else in Bering Sea or the North Pacific save at the Commander (Komandorski) Islands. (Case of the United States, p. 89.)

What might be the result if the seals were prevented from landing to drop their young at the Pribilof Islands is wholly a matter of conjecture. It would seem from the testimony in the Case quite certain that the pregnant females would lose their young if they were on the point of delivery when reaching the islands, and if driven off by man, or by accident; they certainly would be exposed to great danger while looking for another home, even assuming this exercise of sound judgment *in extremis* to be probable. Such difficulties do not, however, trouble the Commissioners, who are satisfied that if they were to be debarred from reaching the islands now chiefly resorted to for breeding purposes, they would speedily seek out other places upon which to give birth to their young. (Report of British Commissioners, Sec. 28.)

This is based upon "experience recorded elsewhere." We fail to find any such recorded experience which would justify so wild an assertion. On the contrary, it appears that when the heavy females have been debarred by ice from the land they were delivered in the water and the young perished.

The experience of the South Sea seals is directly opposed to this theory. Exclusion from their usual haunts meant destruction. Why did they not when shut off from the resort of their choice seek out a new home, with the proper conditions of climate, soil, and food, to take the place of the old home from which man had driven them? We know of no reasonable theory upon which it may be plausibly argued that the Pribilof seals would, under the like circumstances, act differently.

## III.—MOVEMENTS OF THE SEALS AFTER THE BIRTH OF THE YOUNG.

It being conceded that the fur-seals known as the Alaska seals breed, "at least for the most part" (Report of British Commissioners, Sec. 27), on the Pribilof Islands in summer, it becomes important to know what their movements may be after the birth of the young. There is no very material difference between the statements of the Commissioners of the respective governments on this point.

The breeding males begin to arrive on the Pribilof Islands at varying dates in May and remain continuously ashore for about three months, after which they are freed from all duties on the breeding rookeries and only occasionally return to the shores. The breeding females arrive, for the most part, nearly a month later, bearing their young immediately on landing, and remain ashore, jealously guarded by the males, for several weeks, after which they take every opportunity to play in the water close along the beaches, and about a month later they also begin to leave the islands in search of food and migrate to their winter habitat. The young males and the young females come ashore later than the breeding seals, and at more irregular dates, and haul out by themselves. Lastly, the pups of the year born in June and July commence to pod, or herd together, away from their mothers, towards the middle or end of August, and after that frequent the beaches in great numbers and bathe and swim in the surf. They remain on the islands until October, and even November, being among the last to leave. (Report of the British Commissioners, Sec. 30.)

The United States Commissioners make the following statement, which is corroborated by abundant evidence. The bulls are the male seals from five or six to twenty years of age, and weigh from *four hundred* to *seven hundred pounds*. They arrive on the breeding ground in the latter part of April or the first few days of May, but the time is, to a certain extent, dependent upon the going out of the ice about the island. (Case of the United States, p. 108.) Toward the latter part of May or first of June, the cows begin to appear in the waters adjacent to the island and immediately land upon the breeding ground. The great majority, however, do not haul up until the latter part of June, and the arrivals continue until the middle of July.

Some of the bulls at this time (about the first of August) begin to leave the islands, and continue going until the early part of October. [Case of United States, p. 112, citing witnesses as to this point.]

The bachelor seals, or non-breeding males, ranging in age from 1 to 5 or 6 years, begin to arrive in the vicinity of the islands soon after the bulls have taken up their positions upon the rookeries, but the greater number appear toward the latter part of May. They endeavour to land upon the breeding grounds, but are driven off by the bulls and compelled to seek the hauling grounds.

As to the departure of the seals from their home on the Pribilof Islands, there does not seem to be any question that the statement in the United States Commissioners' Report is correct.

The length of time that a pup is dependent upon its mother, as heretofore stated, compels her to remain upon the island until the middle of November, when the cold and stormy weather induces her to start, her pup being then able to support itself (pp. 119, 120).

The bachelor seals generally leave at the same time as the cows and pups leave the island, though a few bachelors always are found after that period (p. 122 of the case of United States).

The Alaskan herd has had but one breeding place, which is the Pribilof Islands. While there is no express contradiction as to this in the Report of the British Commissioners, it may be interesting to cite some of the proof in support of this assertion.

(*a*) The islands are in every particular adapted by climate and conditions to the purpose. While it is suggested, as we have seen above, by the British Commissioners, that the seals would find no difficulty in procuring another suitable place for breeding and for passing the summer months, this is manifestly a conjecture and need not be dwelt upon.

(*b*) There is no evidence that the animal has ever resorted to other places, but all the evidence before this High Tribunal of Arbitration leads to the inference above stated.

The language of the Case on the part of the United States is as follows (p. 89):

> The climatic conditions are especially favorable. The seal, while on land, needs a cool, moist, and cloudy climate, sunshine and warmth producing a very injurious effect upon the animals. These requisite phenomena are found at the Pribilof Islands and nowhere else in Bering Sea or the North Pacific, save at the Commander (Komandorski) Islands.

This is abundantly sustained by the proof. See upon this point the testimony of Charles Bryant (Appendix to Case of the United States, Vol. II, p. 4), Capt. Bryant having been long engaged in whaling and having acted as Special Treasury Agent at the Pribilof Islands. Also Samuel Falconer (*ibid.*, p. 164). Mr. Falconer had had long experience as Treasury Agent on the islands, and otherwise, and is a fully competent witness upon this point. He assigns the reason for the selection of this breeding locality by the seals in the following language:

> The reason the seals have chosen these islands for their home is because the Pribilof group lies in a belt of fog, occasioned by the waters of the Arctic Ocean coming down from the north and the warmer waters of the Pacific flowing north and meeting at about this point in Bering Sea. It is necessary that the seals should have a misty or foggy atmosphere of this kind while on land, as sunshine has a very injurious effect upon them. Then, too, the islands are so isolated that the seal, which is a very timid animal, remains here undisturbed, as every precaution is taken not to disturb the animals while they are on the rookeries. The mean temperature of the islands is during the winter about 26° F., and in summer about 43°. I know of no other locality which possesses these peculiarities of moisture and temperature. The grounds occupied by the seals for breeding purposes are along the coast, extending from high-water mark back to the cliffs, which abound on Saint George Island. The young males or bachelors, not being allowed to land on these breeding places, lie back of and around these breeding grounds on areas designated hauling grounds.

Captain Morgan says (*ibid.*, p. 61):

> I believe that the cause the seals choose these islands for their home is because of the isolation of these Pribilof Islands and because the climatic condition of these Pribilof Islands is peculiarly favorably to seal life. During the time the seals are upon land the weather is damp and cool, the islands being almost continually enveloped in fogs, the average temperature being about 41° F. during the summer.

See, too, Daniel Webster, local agent for the North American Commercial Company, and stationed on St. George Island, who uses the following language (*ibid.*, p. 180):

> These islands are isolated and seem to possess the necessary climatic conditions to make them the favorite breeding grounds of the Alaskan fur-seals, and it is here they congregate during the summer months of each year to bring forth and rear their young.

Mr. Redpath, a resident of St. Paul Island, Alaska. He had resided on the seal islands of St. Paul and St. George since 1875, that is to say, at the time of giving his deposition, some seventeen years. He testified as follows upon this point (*ibid.*, p. 148):

> The Alaskan fur-seal is a native of the Pribilof Islands, and, unless prevented, will return to those islands every year with the regularity of the seasons. All the peculiarities of nature that surround the Pribilof group of islands, such as low and even temperature, fog, mist, and perpetual clouded sky, seem to indicate their fitness and adaptability as a home for the Alaskan fur-seal; and with an instinct bordering on reason, they have selected these lonely and barren islands as the choicest spots of earth upon which to assemble and dwell together during their six months stay on land; and annually they journey across thousands of miles of ocean, and pass hundreds of islands, without pause or rest, until they come to the place of their birth. And it is a well-established fact that upon no other land in the world do the Alaskan fur-seal haul out of water.

## IV.—The Entire Office of Reproduction and Rearing of Young is and must be Performed on Land.

"The act of coition takes place upon land" (Case of the United States, p. 110). The correctness of this assertion is settled beyond controversy by the overwhelming proof furnished by the United States Commissioners. But had they produced no evidence whatever, it is clear that the data furnished by the British Commissioners themselves are insufficient to cast reasonable doubt upon the proposition.

(*a*) The British Commissioners, in their report, begin with the broad and incorrect) statement that the fur-seal is an animal in its nature "essentially pelagic," which "for some portion of the year, however, *naturally* resorts to certain littoral breeding places, where the young are brought forth and suckled on land" (Sec. 261). Why it is and how it happens that an "essentially pelagic" animal should *naturally* resort to land for the most important function of its life does not appear, and yet the exceptional singularity of the circumstance might have made explanation reasonable. It is enough for the present purpose to give, in a word, the explanation of this practice of resorting to land. It may be found in the universally conceded fact, that *when the young happen to be born at sea they perish.* Ability to swim does not come spontaneously or naturally to this "essentially pelagic" animal. It is part of its education, and is not always acquired without difficulty. The race would be at once extinguished, by failure of living offspring, if it were confined to its own element.

Passing this anomaly for the present and again seeking information from the British Commissioners' Report, we learn that the *breeding males* begin to arrive on the Pribilof Islands at varying dates in May and remain continuously on shore *for about three months, after which they are freed from all duties on the breeding rookeries.* * * * The *breeding females* arrive for the most part nearly a month later, bearing their young *immediately on landing and remaining ashore, jealously guarded by the males for several weeks* (Report of British Commissioners, Sec. 30).

It is plain that the impregnation of the female takes place during these months or weeks. The "jealous" care of the breeding males, their sojourn on the land "*until they are freed from all duties on the shore,*" their patient waiting for the females; all these facts show that there is a regular season of coition, which extends as they admit from May until July or August (see Report of British Commissioners, Sec. 306), and that the act takes place on the land.

If this assertion needs further demonstration, it may be readily furnished.

Assuming, as we must, and as the British Commissioners themselves declare, that it is *natural* for the seal to resort to land for the purpose of bringing forth and suckling its young, it being, moreover, uncontradicted that there is but one breeding place for this herd of seals, viz., the Pribilof Islands, it is indisputable that the period of coition and impregnation must so correspond with the period of return to the islands as to enable the mother to time the period of delivery with that of reaching land. Nature is a wise and careful monitor in her dealing with these and other animals and they heed her teachings. Nothing is left to chance in the all-important matter of perpetuating the species. Coition and impregnation at sea and at irregular times would simply mean irregularity of birth and consequent destruction. If the females were impregnated at any other season their young would be born at sea, and, notwithstanding their "essentially pelagic nature," would inevitably perish.

This is further demonstrated by inexorable figures. The breeding females, say the British Commissioners, arrive at the islands nearly a month later than the males—that is to say, in June—and "immediately" drop their young. Given the date of birth (some time in June or July) *and the period of gestation* (about fifty weeks) (Case of the United States, p. 113), it is not difficult to fix the season of fertilization, *but it is impossible to fix it at any other time than the period of the breeding mothers' stay at the islands.* Such evidence as this outweighs the most ingenious and finely drawn conjecture. Even were it possible to show occasional acts of coition in the water after the females have been "released by their jealous male companions" on land, the fact would only be interesting from a scientific standpoint. It would not practically affect the question nor alter the fact that the coition which results in fertilizing the female is performed on land, as a result of natural laws, the violation of which to any considerable extent must eventually endanger the existence of, if not promptly and absolutely destroy, the race.

The British Commissioners, undeterred by these very obvious objections and misled, no doubt, by inaccurate and undisclosed information, assert that there is a certain class of "immature males," known as "half bulls" or "reserves," that poach upon the preserves of the seniors and cover many of the females which escape the attention of the older males upon the rookery grounds and in *such cases* the act of coition is *usually accomplished at sea!* (Sec. 287.)

It is unfortunate that an assertion inconsistent with scientific investigation and completely refuted by abundant proof should have been thus lightly made and suffered to rest upon mere affirmation. The statement is certainly not correct; but, even if it were, it merely states, and this most vaguely, that an irregular practice is sometimes followed in exceptional cases.

But the important point that the "breeding females" are only served by the "breeding males" on land is shown by the report of the British Commissioners themselves:

> The remaining—and, at the time in question, most important—class is that of the breeding females. These, *sometime after the birth of the young and the subsequent copulation with the male*, begin to leave the rookery ground and seek the water. This they are able to do because of the lessened interest of the beach-masters in them, and more particularly after many of the beach-masters themselves begin to leave their stands. (Sec. 306.)

In section 309 Bryant is quoted thus:

> Bryant, after describing the relaxation in watchfulness of the male after impregnation has been accomplished, says of the female: "From that time she lies either sleeping near her young or spends her time either *floating or playing in the water near the shore*, returning occasionally to suckle her pup."

This opinion is especially important, as the same person is relied upon in another place as authority to show that the habit of coition on land has been somewhat modified since 1874. It certainly seems strange that if coition on land was the rule and the exceptions rare prior to 1874, "coition on land seems *not to be the natural method*." (Sec. 296.) There is evidently an error, either in the transcription or in the original statement. Mr. Bryant adds that "only rarely—perhaps in three cases out of ten—is the attempt to copulate *under such circumstances* effectual." This is in direct contradiction to the conceded and established fact that the breeding females are fertilized on land. It is difficult to suppose that Nature did not teach these animals from the earliest date the most "natural" way of satisfying their instinct and perpetuating their species. Perhaps the British Commissioners would not have been driven to the extremity of quoting such statements were it not for the necessity of supporting their theory, viz., the mischievous *diminution of the males by slaughter on the islands*.

Taking these statements altogether, they clearly prove the *habits* of the breeding animal to be as we have contended, subject possibly to alleged exceptions which, even if firmly established, would not impair the substance of the contention. It might, perhaps, be safe to rest this branch of the case at this point and to submit to this learned Tribunal that the inconsistencies and self-repugnances of the Report are such as to deprive it of all value as a guide upon this branch, at least, of the discussion. We shall, however, even at the risk of importunity, pursue the subject still further.

The statement in the Case of the United States as to the habits of the seals in the act of reproduction is as follows (p. 110):

> The act of coition takes place upon land, which by reason of the formation of the genital organs is similar to that of other mammals. It is violent in character and consumes from five to eight minutes.

This statement is not a mere affirmation unsupported by authority. It is based in part upon the evidence of which we here give abstracts:

Mr. Joseph Stanley-Brown (Appendix to Case of the United States, Vol. II, p. 14), a geologist by profession, and as such employed in the United States Geological Survey, says:

> *Pelagic coition I believe to be impossible.* The process upon land by reason of the formation of the genital organs is that of a mammal, is violent in character, and consumes from five to eight minutes. The relative sizes of the male and female are so disproportionate that coition in water would inevitably submerge the female and require that she remain under water longer than would be possible to such an amphibian. I have sat upon the cliffs for hours and watched seals beneath me at play in the clear water. It is true that many of their antics might be mistaken for copulation by a careless observer, and this may have given rise to the theory of pelagic coition. I have never seen a case of the many observed which upon the facts could properly be so construed.

Mr. John M. Morton, United States shipping commissioner at San Francisco, went to Alaska in 1870, arriving at St. Paul Island in October. He remained until the close of the season in the following year. In 1872 he visited all the trading posts of the Alaska Commercial Company. The summer of 1873 he spent on the Island of St. George. In 1875 and 1876 he again visited and spent both summers on St. Paul Island. He was at all times greatly interested in observing the movements and habits of these animals, and scarcely a day passed that he did not visit one or more of the rookeries. During the seasons of 1877 and 1878, while serving in the capacity of special Treasury Agent, he devoted his best attention and study to this subject.

This is his language in his sworn deposition which appears at page 67, Volume II, of the Appendix to the Case of the United States:

> I desire also to express my belief concerning the seal life that *the act of copulation can not be successfully performed in the water.* Those who have witnessed its accomplishment on the rookeries must coincide with such opinion. A firm foundation for the support of the animals, which the ground supplies and the water does not, is indispensable to oppose the pushing motion and forceful action of the posterior parts of the male which he exerts during the coition. The closest observation which I have been able to give to the movements and habits of the seals in the water has furnished no evidence to controvert the above opinion.

S. R. Nettleton, a resident of Seattle, Wash., was appointed Special Agent of the Treasury Department in the autumn of 1889, at which time he went to the island of St. Paul in the performance of his duties. He returned to the States in 1890, and in 1891 returned to St. Paul Island, and remained there through June and July, and was then transferred to the island of St. George, where he remained until June, 1892. In the discharge of his duties as Treasury agent, he made such observations as could be taken from the breeding rookeries and the waters immediately adjacent thereto. His statement of facts is based upon personal observation as well as the information received from the natives of such islands and the white men resident thereon.

This is his language (Appendix to Case of the United States, Vol. II, p. 75):

> Referring to the question as to whether pelagic coition is possible, I have to say that I have never seen it attempted, but from my observations I have come to the conclusion that pelagic coition is a physical impossibility.

Dr. H. H. McIntyre, superintendent for the lessees of the Pribilof Islands, during the entire term of their lease, visited the islands twice in the summer of 1870, and there he remained constantly from April, 1871, until September, 1872, and thereafter went to the islands every summer from 1873 until 1889, inclusive, excepting 1883, 1884, and 1885. His opportunities for observation were excellent, for he remained on the islands four months, from May until August, in each season, supervising the annual seal catch, examining the condition of seal-life, studying the habits of seals, and, in brief, doing such work as the interests of the lessees seemed to demand. He says (Appendix to Case of the United States, Vol. II, p. 42):

> It has been said that copulation also takes place in the water between these young females and the so-called "nonbreeding males," but with the closest scrutiny of the animals when both sexes were swimming and playing together under conditions the most favorable in which they are ever found for observation, I have been unable to verify the truth of this assertion. After coitus on shore, the young female goes off to the feeding grounds or remains on or about the beaches, disporting on the land or in the water as her inclination may lead her. The male of the same age goes upon the "hauling grounds" back of or beside the rookeries, where he remains the greater part of the time, if unmolested, until nearly the date of his next migration.

Mr. Arthur Newman had lived, at the time of his deposition, over twenty years on the Aleutian Islands. For eight years he had been agent for the Alaska Commercial Company, at Chernofsky, and for ten years he had acted in the same capacity at Umnak. He had every opportunity, as will appear from his deposition on page 210, Vol. II, of the Appendix to the Case of the United States, to observe the habits of the seals.

This is his language:

> I have seen seals sleeping on kelp and feeding about it, but have never seen them copulate anywhere except on a rookery. I do not believe that pups born on kelp could be properly nursed and brought up. I do believe that it is necessary to their successful existence that they be born on land, since they can not swim at birth.

Norman Hodgson (*ibid.*, p. 367), a resident of Port Townsend, in the State of Washington, and a fur-seal hunter by occupation, gives many interesting details as to the habits of the seal. On the point now under consideration, he says:

> I do not believe it possible for fur-seals to breed or copulate in the water at sea, and never saw or heard of the action taking place on a patch of floating kelp. I have never seen a young fur-seal pup of the same season's birth in the water at sea on a patch of floating kelp, and, in fact, never knew of their being born anywhere save on a rookery. I have, however, cut open a gravid cow and taken the young one from its mother's womb alive and crying. I do not believe it possible for a young fur-seal pup to be successfully raised unless born and nursed on a rookery. I have seen fur-seals resting on patches of floating kelp at sea, but do not believe they ever haul up for breeding purposes anywhere except on the rookeries.

Charles Bryant, who had spent considerable time on the Islands and had acted during a period of nine years as special agent of the Treasury Department, says (*ibid.*, p. 6):

> In watching the seals while swimming about the islands, I have seen cases where they appeared to be copulating in the water, but I am certain, even if this were the case, that the propagation of the species is not as a rule effected in this way, the natural and usual manner of coition being upon land.

Capt. James W. Budington, who testified to his experience, which was considerable, in seal hunting at Cape Horn and in the Southern Atlantic Ocean, says (*ibid.*, p. 595):

> I am also convinced that copulation takes place on land before they migrate, the period of gestation being about eleven months.

Samuel Falconer, a witness whose experience and qualifications have been mentioned heretofore, says (*ibid.*, p. 165):

> As a general rule, the impregnation is by the bull to whose harem she belongs, and not by the young males, as has sometimes been stated. These young males also pursue a female when she is allowed to leave the harem and go in the water, but she refuses them. I am positive from my observations that copulation in the water could not be effectual, and would be a *most unnatural occurrence*.

John Armstrong, for a long time an employé in the Alaskan service in connection with the sealeries testified with much caution, and is the only one of the witnesses who does not speak with absolute confidence. His testimony is as follows (*ibid.*, p. 2):

> I am asked whether the seals copulate in the water. It is a question that is often discussed at the islands, and neither the scientific observers nor the unscientific are able to agree about it. I have seen seals in position when it seemed to be attempted, but doubt whether it is effectually accomplished. If it were, I think we should see pups sometimes born late and out of season, but such is not the case.

### V.—THE PUP IS ENTIRELY DEPENDENT UPON ITS MOTHER FOR NOURISHMENT FOR SEVERAL MONTHS AFTER ITS BIRTH.

### THE COWS WILL SUCKLE THEIR OWN PUPS ONLY AND THE SUCKLING IS DONE ONLY ON LAND.

As in the case of all mammalia, the young must be dependent for nourishment during a certain period upon the milk furnished by the mother. The proof, moreover, is uncontradicted, and the British Commissioners admit that the suckling is done only on land. There is a question raised, however, which it may be useful to discuss, namely: Are the pups suckled only by their mothers or do these act indiscriminately and give nourishment to such young as they may happen to find conveniently at hand? It is asserted in the Case of the United States that these animals constitute no exception to the general rule by which the mother recognizes her own offspring and nourishes it alone. This is the language of the Case (page 114):

> A cow, as soon as a pup is brought forth, begins to give it nourishment, the act of nursing taking place on land and never in water, and she will only suckle her own offspring. This fact is verified by all those who have ever studied seal life or had experience upon the islands.

William Brennan (Appendix to Case of the United States, Vol. II, p. 359). The testimony of Mr. Brennan, a native of Great Britain and a resident, at the time of making his deposition in 1892, of Seattle, in the State of Washington, is interesting and enters into minute details, which could only be furnished by a person who had practically studied the subject. He says:

> In May the bulls commence to haul up on the rookeries, and the cows come three or four weeks later. The bulls choose such ground as they mean to hold through the summer, fight savagely, and the strongest wins. Each has his own family, and should a stranger approach, there is war. On the rookeries one may see all classes of seals, apart from each other, the bulls and breeding cows in one place and the young in another. The pups are born on the rookeries, and remain with their mothers, living wholly upon their mother's milk until they can go into the sea and care for themselves. There is nothing on the beach for the old ones to eat, and they go several miles from the rookeries out to sea to obtain food. When the pups are born they can not swim, and the mothers take them to the water's edge, where one can see thousands paddling and struggling in the surf. The noise made by the mothers crying for their pups, and the bleating of the pups in answer, make a constant roar. The cow is three years old before she bears young. The pups are about forty-five days old before they can go into the water, but they nurse the mother as long as they stay on the island.

This testimony, if reliable, and there is no reason to dispute its accuracy, establishes the dependency of the pup upon its mother not only for food, but for care and instruction in swimming.

Joseph Stanley-Brown, whose contributions to the subject of fur-seal life and their habits are extremely valuable and are frequently referred to in the Case of the United States, is very emphatic and satisfactory upon this subject. His qualifications have already been stated in connection with other propositions. He says (*ibid.*, pp, 15–16):

> For the first few days, and possibly for a week, or even ten days, the female is able to nourish her young or offspring, but she is soon compelled to seek the sea for food, that her voracious young feeder may be properly nourished, and this seems to be permitted on the part of the male, even though under protestation. The whole physical economy of the seal seems to be arranged for alternate feasting and fasting, and it is probable that in the early days of its life, the young seal might be amply nourished * * * without herself resorting to the sea for food.
>
> The female gives birth to but a single pup. The labor is of short duration, and seems not to produce great pain. In the first weeks of its life, the pup does not seem to recognize its mother, but the latter will recognize and select her offspring among hundreds.
>
> The young, upon being born, have all the appearance of pups of a Newfoundland dog with flippers. On emerging from their warm resting place into the chill air, they utter a plaintive bleat not unlike that of a young lamb. The mother fondles them with many demonstrations of affection, and they begin nursing soon after their birth. * * *
>
> The young seals require the nourishing care of their mother for at least four months, and pups have been killed on the island late in November the stomachs of which were filled with milk. * * *
>
> The pups are afraid of the water; they have to learn to swim by repeated efforts, and even when able to maintain themselves in the quiet

> waters will rush in frantic and ludicrous haste away from an approaching wave. I have taken pups 2 or 3 weeks old and carried them out into still water and they awkwardly, but in terror, floundered toward the shore, although they could have escaped me by going in the other direction. In three trials, paddling in all about 60 feet, the pups became so exhausted that they would have been drowned had I not rescued them. If the pups, when collected in groups or pods near the shore, were to be overtaken by even a moderate surf, they would be drowned, and such accidents to them do occur on the island before they have entirely mastered the art of swimming.

Charles Bryant has been quoted in connection with other propositions contained in the Case of the United States. He testifies upon this point as follows (*ibid.*, p. 5):

> The pup is nursed by its mother from its birth so long as it remains on the islands, the mother leaving the islands at different intervals of time after the pup is 3 or 4 days old. I have seen pups, which I had previously marked with a ribbon, left for three or four days consecutively, the mothers going into the water to feed or bathe. A mother seal will instantly recognize her offspring from a large group of pups on the rookery, distinguishing it by its cry and smell; but I do not think a pup can tell its own mother, as it will nose about any cow which comes near it. A female seal does not suckle any pup save her own, and will drive away any other pups which approach her.
>
> I am positive that if a mother seal was killed her pup must inevitably perish by starvation. As evidence of this fact, I will state that I have taken stray, motherless pups found on the sand beaches and placed them upon the breeding rookeries beside milking females, and in all instances these pups have finally died of starvation.

Testimony such as this must be conclusive, except on the theory of absolute and intentional perjury. It is a satisfaction to the counsel for the United States to be able to state that no witness has been willing, so far as they know and so far as appears from the British Commissioners' Report, to put himself upon record, with or without oath, as directly contradicting these emphatic statements.

John Fratis, a native of Ladrone Islands, went to St. Paul Island in 1869, married a native woman of that place, and became one of the people. Was made a native sealer and resided on the island from that time on. His experience, therefore, is valuable. He says (*ibid.*, p. 108):

> The pups are born soon after the arrival of the cows, and they are helpless and can not swim and they would drown if put into water. The pups have no sustenance except what the cows furnish and no cow suckles any pup but her own. The pups would suck any cow if the cow would let them. After the pup is a few days old the cow goes into the sea to feed, and at first she will only stay away for a few hours, but as the pup grows stronger she will stay away more and more until she will sometimes be away for a week.

Numerous other witnesses were called who agreed that the only means of sustenance for the pup while it remained on the island, that is, for three or four months after its birth, is its mother's milk, and that it would perish if deprived of the same. Upon this point the following testimony may be read:

William Healey Dall (*ibid.*, p. 23); Samuel Falconer (*ibid.*, p. 165); William S. Hereford (*ibid.*, p. 35); Nicoli Krukoff (*ibid.*, p. 135).

H. W. McIntyre says (*ibid.*, p. 136):

> Within a few days after landing (it may be but a few hours or even minutes, as I have seen) the female gives birth to her young, but one being brought forth each year. The reported occasional birth of twins is not verified. These little ones (pups as they are called) are comparatively helpless, particularly awkward in movement, and, unlike the hair-seal, are unable to swim. They are nursed by the mother, who, after copulation has taken place, is permitted by the old male to go at will in quest of food. At about six weeks old, the young gather in groups and shortly after learn to swim, but depend for a long period upon the mother for sustenance; hence her destruction must result in the death of the young through starvation.

So, also, J. H. Moulton (*ibid.*, p. 72).

Mr. Noyes says (*ibid.*, p. 82):

> The pup is entirely dependent upon its dam for sustenance, and when it is a few days old she goes into the sea to feed, returning at intervals of a few hours at first, and gradually lengthening the time as the pups grow older and stronger, until she will be, sometimes, away for a whole week. During these journeys, it is my opinion, she goes a distance of from 40 to 200 miles from the islands to feed; and it is at this time she falls a prey to the pelagic hunter.
>
> Returned to the rookery, the cow goes straight to where she left her pup, and it seems she instantly recognizes the spot by smelling, and it is equally certain that the pup can not recognize its dam. I have often seen pups attempt to suckle cows promiscuously, yet no cow will suckle any pup but her own.

J. C. Redpath (*ibid.*, pp. 148, 149):

> No cow will nurse any pup but her own, and I have often watched the pups attempt to suck cows, but they were always driven off; and this fact convinces me that the cow recognizes her own pup and that the pup does not know its dam. At birth and for several weeks after, the pup is utterly helpless and entirely dependent upon its dam for sustenance; and should anything prevent her return during this period it dies on the rookery. This has been demonstrated beyond a doubt since the sealing vessels have operated largely in the Behring Sea during the months of July, August, and September, and which, killing the cows at the feeding grounds, left the pups to die on the islands.
>
> At about 5 weeks old the pups begin to run about and congregate in bunches or "pods," and at 6 to 8 weeks old they go into the shallow

water and gradually learn to swim. They are not amphibious when born nor can they swim for several weeks thereafter, and were they put into the water would perish beyond a doubt, as has been well established by the drowning of pups caught by the surf in stormy weather. After learning to swim, the pups still draw sustenance from the cows, and I have noticed at the annual killing of pups for food, in November, that their stomachs were always full of milk and nothing else although the cows had left the islands some days before. I have no knowledge of the pups obtaining sustenance of any kind except that furnished by the cows; nor have I ever seen anything but milk in a dead pup's stomach.

Daniel Webster asserts positively that the *death of every mother causes the death of her pup, which is entirely dependent upon her for its sustenance.* Mr. Webster's testimony is valuable not only for its intrinsic value, but because its reliability is vouched for by the British Commissioners themselves (Sec. 677).

It will be observed that all the witnesses cited above are men specially capable, of long experience and a knowledge of the subject sufficient to enlighten any court whose function it may be to ascertain the facts connected with seal life. Such testimony can not fail to be conclusive in the judgment of this Court, unless it should be rejected as willfully and intentionally false. No ground for such a wholesale imputation upon the character of apparently intelligent and reputable men can be suggested. The functions of every court of justice become impossible, and decisions on questions of fact must be left to the caprice of judges, if such testimony may be arbitrarily disregarded. Surely the conjectures and conclusions of an adversary unsupported by the slightest pretense of proof, in a legal sense, can not be deemed a sufficient ground for such a charge. However high may be the character of the British Commissioners for intelligence and integrity, their bald assertions can not take the place of those aids to judicial investigation which the experience of all civilized nations has shown to be indispensable. It would, indeed, be a difficult task for the Arbitrators to reach any conclusion as to the material questions of fact in this case if the example of the British Commissioners had been followed by the Commissioners of the United States and both sides had confined themselves to conjectural assertions and partial and unsatisfactory deductions from uncertain premises. A manifest disposition to perform the part of an advocate rather than the duty of an aid to the court in the ascertainment of the truth, must detract largely from the value of the work performed by the Commissioners for Great Britain.

## VI.—THE COWS, WHILE SUCKLING, GO TO THE SEA FOR FOOD AND SOMETIMES TO DISTANCES AS GREAT AS ONE HUNDRED AND TWO HUNDRED MILES, AND ARE DURING SUCH EXCURSIONS EXPOSED TO CAPTURE BY PELAGIC SEALERS.

The statement in the Case of the United States is as follows (p. 115):

> Necessarily, after a few days of nursing her pup, the cow is compelled to seek food in order to provide sufficient nourishment for her offspring. Soon after coition she leaves the pup on the rookery and goes into the sea, and as the pup gets older and stronger, these excusions lengthen accordingly until she is sometimes absent from the rookeries for a week at a time.

The absolute correctness of this statement is demonstrated in the evidence.

*A cow nurses only her own pup.* The importance of deciding this question correctly makes it necessary that we should give special attention to the evidence upon the subject. The British Commissioners have taken a different view and are without support in the general understanding of men as to the practice and probabilities in such cases. It is easy to demonstrate that the assertion on page 115 of the Case of the United States, to the effect above stated is borne out by overwhelming proof.

Kerrick Artomanoff (Appendix to Case of the United States, Vol. II, p. 100) says:

> The mother seals know their own pups by smelling them and no seal will allow any but her own pup to suck her.

Thomas F. Morgan (*ibid.*, p. 62) says:

> After birth a pup at once begins to suckle its mother, who leaves its offspring only to go into the water for food, which I believe from my observation consists mainly of fish, squids and crustaceans. In her search for food the female, in my opinion, goes 40 miles or even further from the islands. The pup does not appear to recognize its mother, attempting to draw milk from any cow it comes in contact with; but a mother will at once recognize her own pup and will allow no other to nurse her. This I know from often observing a cow fight off other pups who approached her, and search out her own pup from among them, which I think she recognizes by its smell and cry.

Mr. Morgan's testimony is very explicit and is based upon long experience and continued observation.

Samuel Falconer, at one time deputy collector of customs, and whose testimony has been quoted on other points, gives the results of his actual observations. He says (*ibid.*, p. 164):

> The place of birth is on the breeding grounds, which takes place after the female lands, generally within two days. When first born'

> the pup can not swim, and does not learn so to do until it is six or eight weeks of age. It is therefore utterly impossible for a pup to be born in the water and live. I have noticed that when a pup of this age is put in the water it seemed to have no idea of the use of its flippers, and was very much terrified. A pup is certainly for the first six or eight weeks of its life a land animal, and is in no sense amphibious. During this period also a pup moves very much like a young kitten, using its hind flippers as feet. A mother seal will at once recognise her pup by its cry, hobbling over a thousand bleating pups to reach her own, and every other approaching her, save this one little animal, she will drive away. * * * A pup, however, seems not to distinguish its mother from the other females about it.

William Healey Dall, a scientist whose studies were completed under Prof. Louis Agassiz, at Cambridge, in the year 1863, and who has been since that time engaged in scientific work, gave the result of his personal examination made during the several years that he visited St. George Island and the Aleutian Islands. His opportunities to familiarise himself with aquatic seal life were excellent and are fully detailed in his deposition on pages 23 and 24 of the Appendix to the Case of the United States. He says:

> From my knowledge of natural history and from my observations of seal life, I am of the opinion that it would be impossible for the young seals to be brought forth and kept alive in the water. When it is the habit of an animal to give birth to its young upon the land, it is contrary to biologic teaching and common sense to suppose they could successfully bring them forth in the water. It does not seem to me at all likely that a mother would suckle any pup other than her own, for I have repeatedly seen a female select one pup from a large group and pay no attention to the solicitations of others. Pups require the nourishment from their mothers for at least three or four months after their birth, and would perish if deprived of the same.
>
> I have had ample opportunity to form an opinion in regard to the effect upon the herd of killing female seals. The female brings forth a single offspring annually, and hence the repair of the loss by death is not rapid. It is evident that the injury to the herd from the killing of a single female, that is, the producer, is far greater than from the death of the male, as the seal is polygamous in habit. The danger of the herd, therefore, is just in proportion to the destruction of female life. Killing in the open waters is peculiarly destructive to this animal. No discrimination of sex in the water is possible, the securing of the prey when killed is under the best of circumstances uncertain, and as the period of gestation is at least eleven months and of nursing three or four months, the death of the female at any time means the destruction of two, herself and the fœtus; or when nursing, three—herself, the nursing pup, and the fœtus. All killing of females is a menace to the herd, and as soon as such killing reaches the point—as it inevitably must if permitted to continue—where the annual increase will not make good the yearly loss, then the destruction of the herd will be equally rapid and certain, regarded from a commercial standpoint, though a few individuals might survive.

Karp Buterin, a native of St. Paul Island, on which island he had lived up to the time of making his deposition, when he was 39 years of age, had been engaged in driving seals, clubbing and skinning them ever since he was able to work; he says (Appendix to Case of the United States, Vol. II, p. 103):

> Schooners kill cows, pups die, and seals are gone. Some men tell me last year, "Karp, seals are sick." I know seals are not sick; I never seen a sick seal, and I eat seal meat every day of my life. * * * No big seals die unless we club them; only pups die when starved, after the cows are shot at sea. When we used to kill pups for food in November they were always full of milk; the pups that die on the rookeries have no milk. The cows go into the sea to feed after the pups are born, and the schooner men shoot them all the time.

The same rule as to exclusive nursing of her own pups by the cow is proven to exist in the Antarctic regions by Mr. Comer.

George Comer (*ibid.*, p. 598) says:

> I have never seen a "clap-match" suckling more than one pup, and it is my impression that a "clap-match" would not nurse any pup except her own, for I have seen her throw other pups aside and pick out one particular one from the whole number on the rookery.

Anton Melovedoff, a native of Alaska, testifies as follows (*ibid.*, p. 144):

> When the pup is born it is utterly helpless and would drown if put into water. Those born nearest the water are often drowned in the surf when the sea is rough in stormy weather. When the pup is a few days old the cow goes into the sea to feed and as the pup grows older the cow will stay longer and longer until sometimes she will be away for a week. When the cows return they go to their own pups, nor will a cow suckle any pup but her own. The pups would suck any cow that would let them, for they do not seem to know one cow from another.

H. H. McIntyre, to whose valuable deposition attention has been heretofore called, uses this language (*ibid.*, p. 41):

> At this time they are simply land animals, with less aquatic instinct and less ability to sustain themselves in water than newly hatched ducklings. When the pups are a few days old the mothers leave them (generally soon after coition upon the rookeries with the old male) to go to the feeding grounds, returning at intervals of one to three or four days to suckle their young. The pups do not appear to recognize their own dams, but the mother distinguishes her own offspring with unerring accuracy and allows no other to draw her milk.

Louis Kimmel, at one time assistant Treasury agent on St. George Island and a resident of that place for over one year, testifies as follows (*ibid.*, p. 174):

> A cow never suckles any but her own pup. When a strange pup approaches a cow she will drive it away from her, and out of thousands of pups huddled together she will single her own. It is my opinion that if a mother is killed off her offspring dies of starvation.

To the same effect is the testimony of Dr. Hereford. William S. Hereford, a physician of character and experience, a graduate of Santa Clara College, S. J., and of the University of Pennsylvania (*ibid.*, p. 33):

> It is a well-known fact that the female seals leave the islands and go great distances for food, and it is clearly proven that many of them do not return, as the number of pups starved to death on the rookeries demonstrates.
>
> The old mother seal will not nurse any but its own offspring and can single it out of a band of thousand, even after an absence of days from the islands. The difference between a well-nourished pup and one starving to death is also easily recognized, one being plump and lively, growing extremely rapidly, the other slowly dwindling away, its body becoming lean, long, and lanky, the head being the largest and most conspicuous part. The poor little thing finally drops from sheer exhaustion in its tracks, it being only a matter of time before it succumbs to starvation.

Dr. Hereford narrates in a highly interesting manner the efforts made to raise "Little Jimmie," a child of adverse circumstances, whose mother had been accidentally killed. This narrative may be found on pages 33 and 34 of the Appendix to the Case of the United States.

Several other witnesses concur in testifying that the mother will readily distinguish her own offspring from that of others and will not permit the young of any other seal to suckle her. If there is anything in the Report of the Commissioners of Great Britain which rises to the dignity of evidence and which may be weighed against this overwhelming mass of testimony, we have failed to discover it. The plausible suggestion that they make in explanation of the apparent effort of the mother to distinguish her offspring by smelling the various pups, is that she thus goes about until she finds one that does not smell of fresh milk. (Sec. 323).

## VII.—DEATH OF THE COW CAUSES THE DEATH OF THE PUP.

The materiality of the question last discussed, and of the fact asserted and demonstrated that the mother nurses only her own pup, lies chiefly in the correlative assertion that the death of the cow causes the death of the pup.

Assuming the premises to be established that the pup depends upon its mother for food and can be fed in no other way than by that mother, the conclusion establishes itself without the necessity of extrinsic proof. The testimony directly upon this point is voluminous, and, it is submitted, entirely satisfactory. It goes very far to explain one of the general causes for the diminution of the species.

So many witnesses have testified upon this point, and it is so doubtful whether any testimony at all is needed if it be established that the pup depends wholly upon its mother, that we shall confine ourselves to brief abstracts.

George Ball (Appendix to Case of the United States, Vol. II, p. 481), a shipmaster and a sealer, does not hesitate to say that the pups perish with the cows that he and his companions kill.

William Brennan sums up the situation with the conclusive argument that "it stands to reason that if the mothers are killed while away from the island and the pups are left there alone they will surely die, and it is a fact that many mothers are killed in Bering Sea" (*ibid.*, p. 363).

Henry Brown, seaman, engaged in pelagic sealing and residing at Victoria, British Columbia, gives his experience in the slaughter of gravid females as well as the females taken in the Bering Sea which are not gravid, he says: These were cows in milk. Every seal captured causes the death of either an unborn pup or the death of a young pup by starvation on the islands. He says (*ibid.*, p. 318):

> If pelagic sealing is continued, especially with guns, in a few years the seal herd will become commercially destroyed.

Luther T. Franklin, a seal-catcher, being asked, "Do the pups perish with the cows that you kill?" answered, "naturally they must." (Appendix to Case of the United States, Vol. II, p. 426.)

Charles Lutjens testifies, with probably unconscious force, as to the brutality of the occupation in which he is engaged (*ibid.*, p. 459):

> Q. Do the pups perish with the cows that you kill?—A. Certainly Not alone that, but they generally leave, while they go into the Bering Sea, a pup on shore, which also dies from not being able to get any sustenance. The seal which is killed in the Bering Sea may be with pup and also has a pup on shore, which made the killing three seals to one.

Alexander McLean says that if you kill a female seal you kill the pup with her (*ibid.*, p. 437).

For other testimony upon this point, see Daniel Claussen (*ibid.*, p. 412), Luther T. Franklin (*ibid.*, p. 425), Louis Kimel (*ibid.*, p. 174), and many others testifying to the same fact.

Multiplication of extracts could not add to the force of testimony so reasonable and conclusive upon its face.

Indeed, the evidence is so complete that the victims of pelagic slaughter are mainly, if not wholly, females, as to forbid contradiction. We accordingly find that the British Commissioners make this admission: "It is *undoubtedly true* that a *considerable proportion* of the seals taken at sea are females, *as all seals of killable size are killed without discrimination of sex*" (Sec. 78). It is true that they hasten to add that this disproportion is due *in part* to the persistent killing of young males on land. Possibly this may be true. Undoubtedly if the poachers found killable males as well as gravid females, they would slaughter both and the disproportion would be less marked. But the Commissioners do not pretend that the *absolute number* of females killed would be any smaller. The pelagic hunter would kill them all with indiscriminate impartiality. How the situation would be helped by this is not stated, although it may show how the scope of the business might be enlarged. This curiosity is stimulated, but not satisfied, by the admission that their disproportion is *in part* explained as stated; it might have been just to the Tribunal to state what else might be said to throw light upon the subject.

The cows, while suckling, go to sea for food and sometimes to distances as great as 100 to 200 miles, and are during such excursions exposed to capture by pelagic sealers (see Case of the United States, p. 115). The statement in the Case to this effect is borne out by the testimony and by fully substantiated facts.

The vagueness of the statement made by the British Commissioners fails to conceal the evident intent to create the impression that the females, like the males, may live and nurse their young for a long time without food. In section 307 of their Report this language is used:

> It is very generally assumed that the female, on thus beginning to leave the rookery ground, at once resumes her habit of engaging in the active quest for food, and though this would appear to be only natural, particularly in view of the extra drain produced by the demands of the young, it must be remembered that, with scarcely any exception, the stomachs of even the bachelor seals killed upon the islands are found void of food, and that all seals resorting to the islands seem, in a great degree, to share in a common abstinence.

The concession of an *extra drain* upon a nursing female is generously followed up by the statement "that it may be considered certain that after a certain period the females begin to seek such food as can be obtained." It is then stated that "there is a very general belief among the natives, both of the Pribilof and Commander islands, to the effect that the females do not leave the land to feed while engaged in suckling their young." That there is any such general belief is most strenuously denied on the part of the United States, is disproven by the few witnesses cited by the British Commissioners themselves, and is negatived overwhelmingly by the testimony on the part of the United States.

The painful attempt to justify pelagic sealing by distortion of commonly accepted facts is nowhere more apparent than in section 308:

> It appears to us to be quite *probable*, however, that toward the close of the season of suckling, the female seals may actually begin to spend a considerable portion of their time at sea in search of food. It is unlikely that this occurs to any notable extent until after the middle of September, *before which the season of pelagic sealing in Bering Sea practically closes.*

Comment would be absurd on this.

> "Bryant," says the British Commissioner, "after describing the relaxation in watchfulness of the male after impregnation has been accomplished, says of the female: 'From that time she lies either sleeping near her young or spends her time floating or playing in the water near the shore, returning occasionally to suckle her pup.'"

That she should go to the water to play and float and neglect the opportunities of replenishing her energies, wasted as they are by nursing, seems utterly incredible. It is well to note the admission, however, that during this period the suckling is on land whither she returns to accomplish it.

Elliott is quoted in the same section as stating that "the mother nurses her pup every two or three days," but adds, "in this I am very likely mistaken." Again, Elliott says of the mother, coming up from the sea, that "she has been there to wash and perhaps to feed for the last day or two." In another reference given by the British Commissioners from the same authority, he is made to say:

> Soon after the birth of their young, they leave it on the ground and go to the sea for food, returning perhaps to-morrow, perhaps later, even not for several days, in fact, to again suckle and nourish it, *having in the meantime sped far off to distant feeding banks.* (Sec. 309).

It will be observed that this agrees entirely with the testimony produced by the United States. The report then goes on to cite authorities showing how far the cows go out for food. Taylor is quoted as saying that they go out every day a distance of 10 or 15 miles, or even farther.

T. F. Ryan says that the main feeding grounds of the seal during the summer stay upon the islands, and to which the cows are continually going and coming, are to be found 40 to 70 miles south of St. George Island.

G. R. Tingle, in the same report cited, says the seals probably go 20 miles out, in some cases, in search of food.

The British Commissioners, in this exceptional instance, are to be credited not only with having been diligent, but with disclosing the names of the persons from whom information was obtained. It might have been desirable that these statements should be made in the language of the persons themselves. However, we quote it as it is given us.

Tingle, in section 312, extends the feeding area from 20 miles, which he has named above, *to* 30 *or even* 40 *miles* from the land. Redpath did not know of the feeding grounds, but believed that the females go from 10 to 15 miles from the islands for the purpose of feeding. Daniel Webster (whom they graciously indorse as a truthful witness) concurred with Ryan, and expressed the opinion that when feeding in the autumn *the seals went* 60 *miles to the southward of St. George Island.* He believed that there was a *favorite feeding ground in that vicinity*, and stated the reasons of this belief. Mr. Webster is a reliable and intelligent witness, who has frequently been quoted by the American Commissioners. While he does not state the distance as being more than 60 miles, he certainly places it, with other reliable witnesses, sufficiently far out to sea to enable the poachers to destroy this class of seals. It may not be material whether the distance be 60 or 100 miles: when the men bent upon slaughtering seals, irrespective of condition and sex, have discovered the feeding grounds of the mothers, all that they will ask is that the distance be sufficiently great to secure to them immunity in their destructive work.

Mr. Fowler stated to the Commissioners (Sec. 312) that he believed that there was a favorite feeding ground of the seal about 30 miles off the north-east point of St. Paul's Island. This was not from personal knowledge, but dependent upon statements that seals had been seen in abundance there. That the seals caught on the feeding grounds must be females is the conclusive inference from the statements and argument of the British Commissioners themselves. They state that all seals resorting to the islands seem in a great degree to share in a common abstinence, and assert that the stomachs of even the bachelor seals killed upon the islands are found void of food. As all the authorities cited by them confine themselves to the females, it is worse than idle to argue that those which resort to the feeding grounds are either old males or young ones.

The statement is attributed to natives of St. Paul that the females from the rookeries went only 3 or 4 miles to sea, and always returned to their young on shore the same day (Sec. 312). A statement so vague as to names and qualifications hardly deserves notice. It may be important, however, as showing that the natives have observed that females do return to their young for the purpose of nursing them.

Mr. Grebnitsky did not agree with most of the natives, who thought "that the females did not feed during this period," but stated as the result of his own personal observation and long experience that they went out to sea while suckling the young, but not further than half a mile or a mile from the shore. If food is to be procured so near the land by the mother, it may be that when she was seen floating or playing in the water near the shore by Mr. Bryant, and then returning occasionally to suckle her pup, she had also been employed upon the more profitable mission of securing milk-producing material.

Snegiloff thought that the females leave their young for several days to go as far as 10 miles from land to feed, while Kluge, the agent of the Russian Government in charge of the Copper Islands, thought that the females went as far as 2, 3, or 4 miles, but returned to the rookery every night.

To this undigested mass of information, thus unsatisfactorily reported, the magnanimous admission is added that "it is certain from statements obtained that females with milk are *occasionally killed at sea by the pelagic sealers.*" (Sec. 314).

We may conclude from all this testimony on the part of the British Commissioners that the seals which leave the rookeries are almost exclusively, if not wholly, female seals, nursing their young and seeking food, and that they proceed to great distances in some cases, and are found in feeding grounds which may be from 40 to 60 miles distant from the land. It now remains to be seen what testimony is offered on the part of the United States to satisfy the judgment and conscience of the Court which is to determine this, one of the most important elements in the controversy.

Assuming all the parties, who have given the information to the Commissioners of Great Britain and to the United States, for the respective countries to testify fairly and honestly, it is elementary that, where positive evidence of a fact is presented and negative evidence on the other side, the positive evidence shall be credited; otherwise the effect would be to stamp one party with perjury because what he is stated to have seen or said or heard or done was unnoticed or unobserved by the witness testifying in the negative. If, therefore, the sworn testimony of reputable persons is produced extending the area in which the female seals have been observed in quest of food, preference must be given to them rather than to those witnesses whose opportunities may not have been the same or whose powers of observation may not have been equal. Where witnesses *testify positively that they have seen and killed seals over* 100 *miles from land*, can they be truly said to be contradicted as to the fact by men who say that they have never seen them more than 60 miles from the shore?

Peter Anderson (Appendix to Case of the United States, Vol. II, p. 312), a seal-hunter, agrees with Mr. Webster, who is quoted by the British Commissioners. He says:

> A large majority of the seal taken on the coast and in Bering Sea are cows with pup in the Pacific Ocean and with milk in Bering Sea. A few young male seal are taken in the North Pacific Ocean, from two to three years old. Have never taken an old bull in the North Pacific Ocean in my life. A few yearlings have been taken by me, but not many. Used no discrimination, but killed all seals that come near the boats. The best way to shoot seal to secure them is to shoot them in the back of the head when they are asleep with their noses under water. Have never known any seal pups to be born in the water nor anywhere else in Alaska outside of the Pribilof Islands, nor have I ever known fur-seal to haul up anywhere on the land except on the Pribilof Islands. Have taken females that were full of milk 60 miles from the Pribilof Islands.

John Armstrong (Appendix to Case of the United States, Vol. II, p. 1), who had been during many years agent of the Alaska Commercial Company and lived for the whole of ten years upon St. Paul Island, observed that very few seals go out to sea to feed during June, July, and August, except females and some of the younger seals. He adds:

> I am asked whether the seals copulate in the water. It is a question that is often discussed at the island, and neither the scientific observers nor the unscientific are able to agree about it. I have seen seals in position when it seemed to be attempted, but doubt whether it is effectually accomplished. If it were, I think we should see pups sometimes born late and out of season, but such is not the case.

Kerrick Artomanoff (*ibid.*, p. 99) worked on the sealing grounds for the last fifty years. His deposition is well worth reading. It may be found at page 99. He accounts for the decrease in the number of seals since 1874 by the destruction of the females. He states that in 1887 and 1891 the rookeries were covered with dead pups. In his sixty-seven years' residence on the island he never saw anything like it before. No sickness was ever known among the pups or seals, and he had never seen any dead pups on the rookeries, except the few killed by the old bulls when fighting or by drowning when the surf washed them off (*ibid.*, p. 100). He states that four or five days after the birth of the pup the mother seal leaves her offspring and goes away in the sea to feed, and when the pup is two or three weeks old the mother often stays away five or six days at a time.

William C. Bennett (*ibid.*, p. 356) had been a seal hunter all his life; he was 32 years old at the time of deposing. He had hunted the seal with spear and sometimes with a shotgun. Most of the seals taken by him were cows. He thought that the cows slept more and are more easily approached. The sex of the seal not being ascertainable in the water, he shot everything that came near his boat, and when the seal is shot dead it sinks very quick and is hard to secure under those conditions. He also agreed with the other witnesses that seals were decreasing in number very fast, and he attributed this to the indiscriminate killing in the water.

Joseph Stanley-Brown, a geologist, whose testimony on other points has heretofore been given attention, says:

> For the first few days, and possibly for a week or even ten days, the female is able to nourish her young or offspring, but she is soon compelled to seek the sea for food, that her voracious young feeder may be properly nourished, and this seems to be permitted on the part of the male though under protestation. The whole physical economy of the seal seems to be arranged for alternate feasting and fasting, and it is probable that in the early days of its life the young seal might be amply nourished by such milk as the mother might herself afford without resorting herself to the sea for food.

John C. Cantwell (*ibid.*, p. 408), second lieutenant in the United States Revenue Marine, had been on duty in Behring Sea during the years 1884, 1885, 1886, and 1891. He had paid particular attention to the seals, and whenever opportunity offered had visited the rookeries for the purpose of photographing and sketching the animal, etc. He had boarded a large number of vessels fitted out as sealers and engaged in sealing, and had conversed with the masters and crews on the subject of pelagic sealing. This is his testimony:

> From information gathered from these and other sources, and by comparison of testimony given by the seal hunters, would say that at least 60 per cent. of seals killed or wounded escape and are never recovered, and that 75 per cent. of seals shot in the North Pacific Ocean are females heavy with young, and that 80 per cent. of seals shot in Behring Sea from July 1 to September 15 are females, most of which have given birth to their young, and are mostly caught while feeding at various distances from land.

Capt. Carthcut (*ibid.*, p. 404), a master mariner, engaged in hunting the fur-seals for 10 years, extending from 1877 to 1887, during the latter part of the time in Bering Sea, speaks on his personal knowledge, and makes a valuable contribution to the knowledge which we have upon the subject. One of the reasons which he assigns for the great slaughter of female seals is that maturity makes them tame and easily approachable. He says:

> *About* 80 *per cent.* of the seals I caught in the Behring Sea were *mothers in milk*, and were feeding around the fishing banks just north of the Aleutian Islands, and I got most of my seals from 50 to 250 miles from the seal islands. I don't think I ever sealed within 25 miles of the Pribilof Islands. They are very tame after giving birth to their young, and are easily approached by the hunters. When the females leave the islands to feed, they go very fast to the fishing banks, and after they get their food they will go asleep on the waters. That is the hunter's great chance. I think we secured more in proportion to the number killed than we did in the North Pacific. I hunted with shotgun and rifle, but mostly with shotgun. Seals were not nearly as numerous in 1887 as they were in 1877, and it is my belief that the decrease in numbers is due to the hunting and killing of female seals in the water. I do not think it possible for seals to exist for any length of time if the present slaughter continues. The killing of the female means death to her born or unborn pup, and it is not reasonable to expect that this immense drain on the herds can be continued without a very rapid decrease in their numbers, and which practically means extermination within a very few years.

Christ Clausen (*ibid.*, p. 319), a master mariner, was engaged in seal hunting as mate of the British schooner *C. H. Tupper*, in 1889. He resides at Victoria, British Columbia, and also was navigator in the British schooner *Minnie*. His testimony is worth reproducing somewhat extensively. Unless willful perjury be attributed to him, his testimony, based on actual observation and experience in the business of slaughtering seals, should be accepted as conclusive on several of the points under consideration:

> The Indian hunters, when they use spears, saved nearly every one they struck. It is my observation and experience that an Indian, or a white hunter, unless very expert, will kill and destroy many times more than he will save if he uses firearms. It is our object to take them when asleep on the water, and any attempt to capture a breaching seal generally ends in failure. The seals we catch along the coast are nearly all pregnant females. It is seldom we capture an old bull, and what males we get are usually young ones. I have frequently seen cow seals cut open and the unborn pups cut out of them and they would live for several days. This is a frequent occurrence. It is my experience that fully 85 per cent. of the seals I took in Behring Sea were females and had given birth to their pups and their teats would be

> full of milk. I have caught seals of this kind 100 to 150 miles from Pribilof Islands. It is my opinion that spears should be used in hunting seals, and if they are to be kept from extermination the shotgun should be discarded.

Peter Collins, also engaged in sealing as a sailor, testified as to the manner of shooting the seals (*ibid.*, p. 413). Fully three-fourths of the seals shot in the North Pacific, he says, were females with young. He swears that he has seen mothers with their breasts full of milk killed 100 miles or more from the seal islands. He knows that they go great distances for food. His testimony is that of a practical man who evidently entertained no prejudice on the subject of killing the mothers with breasts full of milk. He was apprehensive, however, that his business would be destroyed. He says:

> There were not nearly as many seals to be found in 1889 as there were in 1888. I think the decrease was caused by the great destruction of females killed in the sea by the hunters, and if something is not done to protect them from slaughter in the North Pacific and Behring Sea, they will all be gone in a few years.

Capt. Coulson (*ibid.*, pp. 414–416), of the United States Revenue Marine, makes a very interesting deposition. His experience was practical and extensive. He says:

> In company with Special Agent Murray, Capt. Hooper, and Engineer Brerton, of the Corwin, I visited the reef and Gobatch rookeries, St. Paul Island, in August, 1891, and saw one of the most pitiable sights that I have ever witnessed. Thousands of dead and dying pups were scattered over the rookeries, while the shores were lined with emaciated, hungry little fellows, with their eyes turned toward the sea, uttering plaintive cries for their mothers, which were destined never to return. Numbers of them were opened, their stomachs examined, and the fact revealed that starvation was the cause of death, no organic disease being apparent.
>
> The great number of seals taken by hunters in 1891 was to the westward and north-westward of St. Paul Island, and the largest number of dead found that year in rookeries situated on the west side of the island. This fact alone goes a great way, in my opinion, to confirm the theory that the loss of the mothers was the cause of mortality among the young.
>
> After the mother seals have given birth to their young on the islands, they go to the water to feed and bathe, and *I have observed them*, not only around the island, *but from* 80 *to* 100 *miles out at sea.*
>
> In different years the feeding grounds or the location where the greater number of seals are taken by poachers seem to differ; in other words, the seals frequently change feeding grounds. For instance, in 1887, the greatest number of seals were taken by poachers between Unamak, Akatan Passes and the seal islands, and to the south-westward of St. George Island. In 1889, the catching was largely done to the southward and eastward, in many cases from 50 to 150 miles distant from the seal islands. In the season of 1890, to the southward

and westward, also to northwest and northeast of the islands, showing that the seals have been scattered. The season of 1891, the greatest number were taken to northward and westward of St. Paul, and at various distances from 25 to 150 miles away.

The testimony of such a witness, speaking of his knowledge, declaring *upon his oath* that he had *seen* females feeding 80 to 100 miles from the Pribilof Islands, ought to outweigh the negative and loose statements of any conceivable number of natives or other informants upon whom the British Commissioners have relied.

Charles Challall (*ibid.*, p. 410), a sealer who had been sealing up the coast and in Bering Sea three seasons, testified as follows:

> Most of the seals we killed up the coast were females heavy with pup. I think nine out of every ten were females. At least seven out of every eight seals caught in the Bering Sea were mothers in milk. The vessels I went out in had from four to six boats each. Each boat had three men, a hunter and two pullers. The average hunter would get one out of every three that he shot; a poor hunter not nearly so many. There are twenty-one buckshots to a shell. I think a great many seals are wounded by hunters that are not taken. The gunshot wounds more seals than the rifle. I think the aim of the hunter is to kill the seal rather than to wound it. When they are in schools sleeping we get a good many. We did not get as many we shot at in the Bering Sea as we did on the coast. If we got one out of every three that we wounded in the Bering Sea we were doing pretty well. I do not know of any place where the seals haul up on this coast except on the seal islands.

Mr. W. H. Dall (upon whose manuscript note, said to have been supplied to Prof. Allen, the British Commissioners rely to show coition in the water). He testifies to having seen seals in the water of Bering Sea 100 miles or more from the Islands. His testimony, too, seems conclusive, if he is a reliable witness. This is his language:

> The Pribilof Islands are the chosen home of the fur-seal (*Callorhinus ursinus*). Upon these islands they are born; there they first learn to swim, and more than half their life is spent upon them and in the water adjacent thereto. *Here they give birth to their young, breed, nurse their pups, and go to and from their feeding grounds, which may be miles distant from the islands. I have seen seals in the waters of Bering Sea distant* 100 *miles or more from the islands* at various times *between the* 1*st of July and October. These seals were doubtless in search of food,* which consists, according to my observation, of fish, squid, crustaceans, and even mollusks. Upon the approach of winter the seals leave their homes, influenced doubtless by the severity of the climate and decrease in the food supply (Appendix to Case of the United States, Vol. II, p. 23).

James Henry Douglas (*ibid.*, p. 419), was by occupation a master and pilot of vessels, and had had long experience sailing in the North Pacific and Bering Sea; had gone to the seal islands in the latter sea over twenty years ago, and been there many times subsequently while in the employ of the Government. He testifies that his observation and information agreed with that of many other witnesses. He says:

> My information and observation is that a very large proportion of those killed along the coast and at sea from Oregon to the Aleutian Islands are female seals with pups; I think not less than 95 per cent. The proportion of female seals killed in the Bering Sea is equally large, but the destruction to seal life is much greater owing to the fact that when a mother seal is killed her suckling pup left at the rookery also perishes. Impregnation having also taken place before she left the rookery in search of food, the fœtus of the next year's birth is likewise destroyed. I also found that *females after giving birth to their young at the rookeries seek the codfish banks at various points at a distance of from 40 to 125 miles from the islands for food*, and are frequently absent one or more days at a time, when they return to find their young.
>
> I have noticed that the females when at sea are less wild and distrustful than the bachelor seals, and dive less quickly in the presence of the hunter. After feeding plentifully or when resting after heavy weather they appear to fall asleep upon the surface of the water. It is then they become an easy target for the hunters.

George Dishow, of Victoria, British Columbia, was by occupation a seal hunter and pursued that business six years (*ibid.*, p. 323).

> *I use a shotgun exclusively for taking seal. Old hunters lose but very few seals, but beginners lose a great many.* I use the Parker shotgun. *A large proportion of all seals taken are females with pup.* A very few yearlings are taken. I never examined them as to sex. But very few old bulls are taken, but five being taken out of a total of 900 seals taken by my schooner. Use no discrimination in killing seal, but *shoot everything* that comes near the boat in the shape of a seal. Hunters shoot seal in the most exposed part of the body. Have never known any pups to be born in the water, nor on the land on the coast of Alaska anywhere outside of the Pribilof Islands. Have never known fur-seal to haul up on the land anywhere on the coast except on the Pribilof Islands. Most of the seals taken in Bering Sea are females. *Have taken them 70 miles from the islands that were full of milk.* I think a closed season should be established for breeding seal from January 1st to August 15th in the North Pacific Ocean and Bering Sea.

George Fairchild (*ibid.*, p. 423), made a sealing voyage to the North Pacific Sea as sailor on the *Sadie Clyde*, sailing from Victoria on the 10th of April, 1888. They went north to the Bering Sea, sealing all the way up, and got 110 seals before entering the sea:

> "*Most of them*," he says, "*were cows, nearly all of which had pups in them. We took some of the pups alive* out of the bodies of the females. *We entered the Bering Sea May 25, and we got 704 seals in there, the greater quantity of which were females with their breasts full of milk, a fact which I know by reason of having seen the milk flow on the deck when*

> *they were being skinned.* We had 5 boats on board, each boat having a hunter, boat puller and steerer. We used shotguns and rifles. We got one out of every 5 or 6 that we killed or wounded. We wounded a great many that we did not get. We caught them from 10 to 50 miles off the seal islands."

This is the *sportsmanlike method* of hunting seals of which the British Commissioners speak in terms of undisguised admiration!

Samuel Falconer (*ibid.*, p. 165), deputy collector of customs in 1868 and 1869, then purser on board the steamer *Constantine*, was also in charge of St. Paul Island several years. It was a part of his duty to make a very careful and full study of seal life. It was his opinion that if a *pup lost its mother by any accident it would certainly die by starvation.* When the young seal are 6 or 8 weeks of age their mothers force them into the water and teach them to swim. After repeated trials the pup learns to swim, and from that time on spends a great deal of time in the water, but still the greater portion of these first months of its life are spent on land sleeping and nursing.

> The cow, after bringing forth her young, remains on the rookery until again fertilized by the bull, which is, I believe, within two weeks. After the fertilization she is allowed to go to and from the water at will in search of food, which she must obtain so she can nurse her pup. She goes on these feeding excursions sometimes, I believe, 40 *or more miles* from the island, *and as she swims with great rapidity, covers the distance in a short time.* She may go much farther, for I have known a cow to be absent from her pup for two days, leaving it without nourishment for this period. This shows how tenacious of life a young seal is, and how long it can live without sustenance of any sort. The 3-year-old male has meanwhile landed on the hauling ground and is now the most available age to kill for his pelt.

John Fratis (*ibid.*, p. 108) was of opinion that the cows were killed by the hunters when they go out in the sea to feed, and the pups are left to die and do die on the islands. He says:

> The pups are born soon after the arrival of the cows, and they are helpless and can not swim, and they would drown if put into the water. The pups heve no sustenance except what the cows furnish, and no cow suckles any pup but her own. The pups would suck any cow if the cow would let them.
>
> *After the pup is a few days old the cow goes into the sea to feed*, and at first she will only stay away for a few hours, but as the pup grows stronger she will stay away more and more until *she will sometimes be away for a week.*

William Frazer gives his experience as a sealer. The hunters use shotguns, he says (*ibid.*, p. 427), and got about one out of every six they shot at or killed, and sometimes they got none. The great majority of them were females. Most of the females killed have unborn pups or were cows in the milk. They did not kill any on the Island because they never went in close enough. He testifies positively that "we," meaning his companions and himself on the *Charles Wilson*, "killed females giving milk more than 100 miles from the seal islands. Most of the seals sunk or dove out of sight when killed or wounded, and a great many of them we could not get." On one occasion he got 600 seals. He does not know whether it was on the American side or not. They were almost all females. He noticed when he skinned them that they were females in milk, as the milk would run from their breasts on to the decks. He concurs with the other witnesses as to the diminution in the number of seals.

Norman Hodgson (*ibid.*, p. 366) *observed nursing cows from* 60 *to* 80 *miles from the Pribilof Islands*, where they were ranging to feed.

> I do not think it possible for fur-seals to breed or copulate in water at sea and never saw nor heard of the action taking place on a patch of floating kelp. I have never seen a young fur-seal pup of the same season's birth in the water at sea nor on a patch of floating kelp and in fact never knew of their being born anywhere save on a rookery. *I have, however, cut open a gravid cow and taken the young one from its mother's womb alive and crying.* I do not believe it possible for a fur-seal to be successfully raised unless born and nursed on a rookery. I have seen fur-seals resting on patches of floating kelp at sea, but do not believe they ever haul up for breeding purposes anywhere except on rookeries.

Chad George (*ibid.*, p. 365) 27 years old and a seal hunter since he was a mere boy, has been engaged in the killing of seals and speared everything that came near his boat, regardless of sex. *He had killed seals* 200 *miles from the Pribilof Islands that were full of milk.*

H. A. Gliddon (*ibid.*, p. 210), stated that the females during the entire sealing season are going and coming to and from the water for the purpose of feeding, and in his opinion while the females are thus going to and from the feeding ground and through the Aleutian passes they are intercepted and shot by open-sea sealers.

Capt. E. M. Greenleaf, a resident of Victoria, British Columbia, a seafaring man, holding a commission as master mariner, captured *at one time sixty-three seals, all of which were females and all were pregnant* (*ibid.*, p. 324). He was informed by conversation with Bering Sea seal hunters that they killed seal cows 20 *to* 200 *miles* from the breeding grounds, and that these cows had evidently given birth at a recent time to young. As to the proportions of seals fired at and killed or wounded, it is his judgment that, taking the run of hunters, good and bad, the *best get about* 50 *per cent.* of those shot at, and the poorest not more than one out of fifteen.

Cumulative testimony to this effect might be cited to the extent of wearisome repetition, but if the learned Arbitrators should desire to pursue the subject as far as the evidence will permit, we give below references to the testimony to be found in the Appendix and not specially quoted.

We submit that it is absolutely conclusive unless, as we have suggested before, for some unknown reason it should be rejected as intentionally and criminally false.

Arthur Griffin (*ibid.*, p. 325) *captured females from* 20 *to* 200 *miles* from the rookeries.

James Griffin (*ibid.*, p. 433) *killed female seals full of milk* 90 *miles from the islands.*

Martin Hannon (*ibid.*, p. 445) *killed them full of milk* 100 *miles from the seal islands.*

James Harrison (*ibid.*, p. 326) *caught* 200 *seals in the Behring Sea about the* 1*st of June, mostly mothers.*

James Hayward (*ibid.*, p. 327) caught them 150 *miles from the shore and skinned them when their breasts were full of milk.* He says that they travel very fast and go a long way to feed.

J. Johnson (*ibid.*, p. 331) killed female seals full of milk 75 miles from the island; used a shotgun and killed everything.

Louis Kimmel (*ibid.*, p. 173) had observed them *at least* 20 *miles* from the islands.

Andrew Laing (*ibid.*, p. 334) had caught them 75 *to* 100 miles from the island, and *in skinning them the milk would run out of the teats of the females,* they having given birth recently to young on the islands.

William H. Long (*ibid.*, p. 457) *killed mothers in milk all the way from* 10 *to* 200 *miles off shore.*

Thomas Lowe (*ibid.*, p. 371) in 1889 hunted in the Bering Sea *from* 80 *to* 100 *miles off* the Pribilof Islands. *Two-thirds of his catch were cows in milk.*

Thomas Lyons (*ibid.*, p. 460) about the 26th or 28th of June went into the Bering Sea and caught 389 *seals, nearly all* of which were *mothers in milk.* He knows it as he saw the milk flow on the deck while skinning them.

William M. McLaughlin (*ibid.*, p. 461) killed them 50 *to* 60 *miles off shore, most of them with milk.*

Alexander McLean (*ibid.*, p. 436) killed them as far off as 150 *miles off the land.* They were *mothers with young.*

Daniel McLean (*ibid.*, p. 444) killed mothers all the way from 20 to 65 miles off St. George and St. Paul.

Robert H. McManus (*ibid.*, p. 335), a resident of Victoria; by profession a newspaper correspondent; went for his health on a sealing expedition. His deposition is exceptionally minute and interesting. The men on his ship (Schooner *Otto*) killed them at a distance of 200 miles from the rookeries. Over three-fourths of his catch were cows in milk. Judged from the number of shots fired that it took about one hundred to secure one seal; one day there was a total catch of seventeen seals; great proportion were in milk; horrid sight; could not stay the ordeal out till all were flayed.

Thomas Madden (*ibid.*, p. 463) has spent or had been going to the Bering Sea over 12 years, which he entered about June. Most of the seals killed were cows, and he saw the milk run out of their breasts on the deck as they were being skinned.

G. E. Miner (*ibid.*, p. 466) killed seals *with milk* 250 *miles* from the Pribilof Islands.

Thomas F. Morgan (*ibid.*, p. 60) says that the female goes 40 *miles or even farther* from the island.

Niles Nelson (*ibid.*, p. 469) *swears that he has killed mothers in milk* 100 *miles or more* from the island.

Dr. Noyes (*ibid.*, p. 82), resident physician and sometimes schoolmaster on the islands, says that the female mother goes a distance of from 40 *to* 200 *miles from the island to feed.* His deposition is very full and interesting. It is valuable as shedding light on most, if not all, of the questions here involved.

John Olsen (*ibid.*, p. 471) swears that *he shot twenty-eight himself from* 50 *to* 150 *miles off* the seal islands. *They were mothers full of milk.*

Other witnesses estimate the distance at 60 miles, 100 miles, etc. See T. F. Ryan (*ibid.*, p. 175), C. M. Scammon (*ibid.*, p. 473), Adolphus Sayres (*ibid.*, p. 473), L. G. Shepard (*ibid.*, p. 187), William H. Smith (*ibid.*, p. 478), Z. L. Tanner (*ibid.*, p. 374).

Capt. Tanner, lieutenant-commander in the United States Navy, makes a deposition which is entitled to particular consideration. The following is a short extract:

> Seals killed in Bering Sea after the birth of pups are largely mother seals, *and the farther they are found from the islands the greater the per-*

*centage will be.* The reason for this seeming paradox is very simple. The young males, having no family responsibilities, can afford to hunt nearer home, where food can be found if sufficient time is devoted to the search. The mother does not leave her young except when necessity compels her to seeks food for its sustenance. She cannot afford to waste time on feeding grounds already occupied by younger and more active feeders; hence she makes the best of her way to richer fields farther away, gorges herself with food, then seeks rest and a quiet nap on the surface. Under these circumstance she sleeps soundly, and becomes an easy victim to the watchful hunter.

A double waste occurs when the mother seal is killed, as the pups will surely starve to death. A mother seal will give sustenance to no pup but her own. I saw sad evidences of this waste on St. Paul last season, where large numbers of pups were lying about the rookeries, where they had died of starvation.

Adolph W. Thompson (*ibid.*, p. 486) killed females in milk, *although he never went nearer to the island than* 25 *or* 30 *miles.*

Michael White (*ibid.*, p. 489) killed seals in milk *not less than* 100 *to* 200 *miles* from the island.

William H. Williams (*ibid.*, p. 93), United States Treasury agent in charge of the seal islands in Bering Sea, states that it is a well-known fact substantiated by the statements of reputable persons who have been on sealing vessels and seen them killed 200 *miles or more from the islands, and who say that they have seen the decks of the vessels slippery of milk flowing from the carcasses of the dead females.* He alludes to the thousands of dead pups left on the rookeries starved to death by the destruction of their mothers as conclusive evidence of the destruction and havoc wrought by the pelagic seal hunters.

If this cumulative and unimpeachable evidence does not establish the fact which we have undertaken to prove, we must despair of satisfying this High Tribunal or any other tribunal of the correctness of our statements. We submit, however, that it is more than made out—that it must be taken as a fact in the discussion of this case—that the cows, while suckling, go to sea for food; for they travel long distances, sometimes as great as 200 miles; and that during such excursions they are ruthlessly slaughtered by pelagic sealers, in many cases without profit, as they sink and are irretrievably lost. The sickening details, abundantly furnished by the witnesses, sufficiently characterize the business, and justify the harshest expressions of condemnation. The slaughter thus described constitutes a crime, for it violates the most common instincts of our nature and would be punished by the laws of every civilized nation, if jurisdiction could only be acquired over the wrong doers. And yet the Commissioners for Great Britain undertake to justify this practice for its sportsmanlike qualities, and to eulogize it because it gives the seals a fair sporting chance for their life (Sec. 625). It is really, they say, *hunting as distinguished from slaughter* (*ibid.*). It is not easy to discuss these propositions with that patient and respectful consideration which is due to the importance of the questions involved.

### VIII.—THE FUR-SEAL IS A POLYGAMOUS ANIMAL, AND THE MALE IS AT LEAST FOUR TIMES AS LARGE AS THE FEMALE. AS A RULE, EACH MALE SERVES ABOUT FIFTEEN OR TWENTY FEMALES, BUT IN SOME CASES AS MANY AS FIFTY OR MORE (CASE OF THE UNITED STATES, p. 327).

A great diminution in the number of females making up a harem has been noticeable in late years. Formerly there would be on an average 30 cows to a bull; now they will not average 15 (Case of the United States, p. 344). The British Commissioners are in substantial accord with the statements above quoted as to the service of the female by the male. They cite from Bryant to show that the proportion is 1 male to 9 to 12 females; from Elliott, that the mean number is 5 to 20, and from Mr. Grebnitzky, that the ratio should not exceed 1 to 20 (Sec. 54). This is sufficient for our present purposes, especially as they add that it is no *uncommon event*, during the last few years, *to find a single male seal with a harem numbering from* 40 *to* 50, *and even as many as* 60 *to* 80, *females* (Sec. 55). With their deductions from these facts we are not at this moment concerned. It is apparent, on the face of the report, that the Commissioners had a theory to support and that the facts were read by them in the light of that theory. An amusing illustration, among many, is found in the statements on this very point. Bearing in mind the severe criticism of earlier sections (54, 55, and 56) upon the system of sacrificing males so that the bulls are forced to supply the necessities of 40 *to* 60 *and even* 60 *to* 80 *females*, read section 483, describing the condition of seal life as far back as 1842:

> In the well-known Penny Cyclopedia, published *so lately* as 1842 [half a century ago], the seal is described as follows: * * * "When these migratory seals appear off Kamtchatka and Kuriles early in the spring, they are in high condition and the females are pregnant. They remain on and about the shore for two months, during which the females bring forth. They are polygamous and live in families, *every male being surrounded by a crowd of females* (*from* 50 *to* 80), *whom he guards with the greatest jealousy.*" (Sec. 483.)

It would seem from this extract that the polygamous practices and habits of the seal have not changed since 1842 and that the service by one male of a large number of females is *not* new and is *not* the result of excessive slaughter on the land.

We are not left, however, to the statements, inconsistencies, and citations of the British Commissioners' report. The testimony of many witnesses bears out the propositions stated in the Case of the United States and disposes at the same time of the pretense that the bulls are now compelled to perform increased and exhaustive duty by reason of a reduction in the number of young bulls.

The fact seems to be well established that the bull is possessed of extraordinary powers. He is able to subsist several months without tasting food and to fertilize at the same time an almost indefinite number of cows. The limitation in the number of his harem depends generally upon his ability to secure a larger or smaller proportion of females.

He gathers about him as many cows as he can. Joseph Stanley-Brown speaks on this subject from actual observation. He describes the breeding bull as possessing "a vitality unsurpassed by any other member of the animal kingdom." He testifies that the very large harems were unfrequent and that the average number in the season immediately preceding was about 20 to 25. (Appendix to Case of the United States, Vol. II, p. 13.) Charles Bryant places the average at 15 to 20 cows for each bull. (*Ibid.*, p. 6.) Samuel Falconer testifies to having seen 20 cows or more to a bull, but of course, he added, the exact number in a harem is a matter of conjecture, as many cows are absent in the water after the season has fairly commenced. (*Ibid.*, p. 166.) T. F. Morgan testifies that the bull returns to the island about the 1st of May and hauls up to the breeding rookeries, provided he is able to maintain himself there, which takes many bloody conflicts. *There he gathers about him as many females as he is able.* (*Ibid.*, p. 3.) Capt. Olsen is quoted by Theodore T. Williams as placing the number of females served by one bull at 20 or 25 (*ibid.*, p. 505).

The respective weights of the animals is placed in the Case of the United States at 400 to 700 pounds; that of the cows at 100 (pp. 107, 113).

This great disparity in bulk should be borne in mind when we consider the probability of pelagic copulation.

The Encyclopedia Britannica states the weight of the animals substantially as it is stated in the testimony and case. The male seal is said to weigh 500 to 700 pounds, the females 80 to 100. There seems to be no dispute as to these estimates. (The Cyclopedia also states that soon after the landing the female gives birth to one pup, weighing about 6 pounds.)

The real conflict between the report of the British Commissioners and the Case of the United States seems to be as to the number of cows in a harem. The British Commissioners assert that the number is unduly large of cows served by one bull; the United States produce credible and experienced witnesses to show that, on the contrary, the number of females is decreasing. A comparison is invited between the two statements and the quality of proof adduced in favor of each. It is plain that the British Commissioners could not admit the diminution in number of female seals without admitting that decrease to be wholly due to pelagic slaughter. They are therefore reduced to the necessity of insisting that there is a redundancy of females and a deficit of males on the Islands. They are kind enough to admit, however, that "the sparing of females, *in a degree*, prevented, for the time being, the actual depletion of seals on the islands" (Sec. 58). It is not probable that any reasonable person will take issue with them on that point. The intelligence and legislation of the civilized world, not to speak of humanity in its broad sense, have concurred that to spare the female was, not the best, but the only effective method of preventing depletion and eventual extermination.

Even if we should concede, for the sake of the argument and in direct disregard of the fact, that the diminution is due to the smaller number of males, we would venture to remind this High Tribunal, if such a reminder were needed, that the pirates or poachers who pursue and slaughter the pregnant and nursing females are killing, by starvation in the one case, by the mother's death in the other, *a large number of males.* Even, according to their own showing, the British Commissioners must realize that *pelagic sealing is responsible*, to some extent at least, *for the decrease in the number of males, as well as of females.* They may speak of this "industry," as they term it, and glorify it as requiring all the courage and skill which can be brought to bear on it (whatever that may mean). (Sec. 609.) They may contrast its "sportsmanlike" character with the "butchery" committed on the islands (Sec. 610); but they cannot fail to perceive that the mode of destruction which principally deals with gravid females, necessarily strikes at the very foundation of life and must eventually extinguish the race, because, as they mildly state it, it is *unduly destructive* (Sec. 633).

The pelagic sealer not only kills or attempts to kill the males that he happens to meet, but prevents the birth of males to take their place. He often kills three with one discharge of his rifle, viz.: the mother, the unborn young, and the pup at home; but he does it in a " sportsmanlike " manner, and he gives the sleeping animal a " fair sporting chance for its life." (Sec. 610.) In many cases he either misses his object or wounds it and loses it. So that there is by this manly process an utterly useless waste of life, in many cases a waste more or less appalling as the " sportsman " is more or less skilful. How destructive in reality this process is proven to be may be seen from the British Commissioners' report under the head of " Proportion of Seals Lost " (p. 104, Sec. 603). It must be a consolation to those disposed to extol this kind of sport that while nearly " all the pelagic sealers concur in the opinion that the fur-seal is annually becoming more shy and wary at sea," it is certain that "*the dexterity of the hunters has increased pari passu with the wariness of the seals.*" (British Commissioners' Report, Sec. 401.)

That the number of the seals has been diminished in recent years and at a cumulative rate, and that such diminution is the consequence of destruction by man, is certified by the Joint Report of all the Commissioners. That this human agency is pelagic sealing exclusively, and not the mode, manner, or extent of capture upon the breeding islands, is abundantly clear.

This follows necessarily from admitted facts. The fur-seals being *polygamous*, and each male sufficient for from 30 to 50 females, and being able to secure to himself that number, it follows that there must be at all times a larger number of superfluous males, and the killing of these produces no permanent diminution of the number of the herd. On the other hand, the killing of a single breeding female necessarily reduces *pro tanto* the normal numbers.

An excessive killing of males might indeed tend toward a decrease if carried to such an extent as not to leave enough for the purpose of effectual impregnation of all the breeding females. The taking from these herds of 100,000 males would not, if that were the only draft allowed, be excessive. This is evident from many considerations.

(*a*) Those who, like the British Commissioners, propose to allow pelagic sealing to such an extent as would involve the annual slaughter of at least 50,000 *females in addition to a slaughter of* 50,000 *young males* on the breeding islands, can not certainly with the least consistency assert that the capture limited to 100,000 males would be excessive. Nor could they consistently assert this even though the pelagic slaughter should be restricted (by some means which no one has yet suggested) to 10,000 females. It requires no argument to show that the destruction of even that number would be rapidly disastrous to the herds.

(*b*) And when we turn to the proofs, they are conclusive that prior to the practice upon any considerable scale of pelagic sealing, the annual draft of 100,000 young males did not tend to a diminution of numbers.

(*c*) Of course it is easily possible that the indiscriminate slaughter effected by pelagic sealing may soon so far reduce the birth rate as to make it difficult to obtain the annual draft of 100,000 young males. This draft, under such circumstances, would not necessarily at once diminish the birth rate, for, the number of females being less, a less number of males would be required. The number of the whole herd might be rapidly diminished by the slaughter of females and the consequent diminution of the birth rate, and still 100,000 males continue to be taken for a time without damage. How soon a point would be reached at which so large a draft of males from a constantly diminishing number of births would operate to produce an insufficiency of males, is a problem which from want of precise knowledge of the relative numbers of the sexes, it would be difficult to solve.

The British Commissioners' Report upon this subject is as follows:

> The systematic and persistent hunting and slaughter of the fur-seal of the North Pacific, both on shore and at sea, has naturally and inevitably given rise to certain changes in the habits and mode of life of that animal, which are of importance not only in themselves, but as indicating the effects of such pursuit, and in showing in what particular this is injurious to seal life as a whole. Such changes doubtless began more than a century ago, and some of them may be traced in the historical precis, elsewhere given (Sec. 782 *et seq.*). It is unfortunately true, however, that the disturbance to the normal course of seal life has become even more serious in recent years, and that there is therefore no lack of material from which to study its character and effect even at the present time.

In the zeal of their advocacy on behalf of pelagic sealing and their denunciation of the methods in use on the Islands, the Commissioners have experienced much and evident difficulty in framing their theory. If they admitted, in unqualified terms, a decrease in number, the obvious deduction from the concession would be that the unlimited slaughter of females must bear the blame and burden of such a result. To that extent pelagic sealing must be condemned. If, on the other hand, they should assert that the number actually increased, this would only be consistent with an approval of the methods in use on the land. Between this Scylla and this Charybdis a way of escape must be found and it was found. The ingenuity here displayed deserves full notice and acknowledgment. The Joint Report contains this statement:

> We find that since the Alaska purchase a marked diminution in the number of seals on and habitually resorting to the Pribilof Islands has taken place, that it has been cumulative in effect and that it is the result of excessive killing by man.

Bearing in mind that the fur-seals forming the object of this controversy have no other home or land than the Pribilof Islands, and that the British Commissioners themselves concede that they, *for the most part, breed* on those islands; bearing in mind, too, that these gentlemen have not yet discovered any other *summer habitat* for the seals, it would seem that this declaration is equivalent, in its fair sense and meaning, to a statement *that the fur-seals that frequent the American coast and the Bering Sea have suffered a marked decrease.*

Perhaps it was so intended by the British as it was by the United States Commissioners; but if so, the former gentlemen have lost sight of their original intention and have been led to nice distinctions, which we shall now examine.

That the seal, although "essentially pelagic" (Sec. 26), has not yet learned to breed at sea is not denied, although to the vision of the Commissioners the prospect of such a transformation or evolution is evidently not very remote. We must, in justice to them, quote one single passage which admirably illustrates the complacency and self-confidence with which they wrest to their own purposes, with unhesitating violence, the laws of nature and the mysteries of ulterior evolution. If this quotation does not give a just idea of the imaginative powers of these officials nothing but a perusal of the whole of their work will do them justice:

> The changes in the habits and mode of life of the seals naturally divide themselves into two classes, which may be considered separately. The first and most direct and palpable of these is that shown in the increased shyness and wariness of the animal, which, though *always pelagic* in its nature, has been *forced by circumstances* to shun the land more than before, so that, but for *the necessity imposed upon it of seeking the shore at the season of birth of the young, it might probably ere this have become entirely pelagic.*

An animal "always pelagic," *forced by circumstances to shun the land more than before*, and which *would become entirely* pelagic long before this if it were not *obliged* to seek the shore for so trifling an object as giving birth to its young certainly deserves to be classed among the curiosities of nature. The difference between animals (now) *always* pelagic and those (in the future) *entirely* pelagic may not readily be understood without explanation not vouchsafed. How can *they be always pelagic* if they are obliged to seek the land or perish and why is it reasonable to talk of the probability of their becoming something different from what they are when that conjecture is based upon nothing but reckless and grotesque assumption? Of course this and other specimens of affront to common sense are merely gratuitous and pointless vagaries. But the thesis must be sustained viz: that the seals are not even amphibious animals; their resort to land is a merely accidental necessity, and therefore the United States can no more claim a right to or possession in them than in other "essentially pelagic animals," such as the whale, the codfish, or the turbot.

If anything more were needed to emphasize the absurdity of this defiance of well-known facts and settled distinctions in the animal world we might still further cite the British Commissioners on the subject of the seal *pelage* or shedding of hair. It seems that these pelagic animals were not endowed by nature with the proper skin to perform this function in their native element. Unless they can find a suitable place *out of water* they retain the old hair and disregard the laws which would compel an annual shedding. Lest this seem an exaggeration, read their Report citing Mr. Grebnitsky: "During the 'stagey' or shedding season their *pelage becomes too thin to afford a suitable protection from the water.* (See section 202, also 281, 631, 632.)

It is hardly necessary to say that this theory, so gravely and seriously advanced, that the seal is naturally and essentially a pelagic animal, is utterly unsustained by evidence, is refuted by the language of the Commissioners themselves and disputed by elementary writers. It is only necessary to ascertain how naturalists define pelagic animals and then compare such definition with the known characteristics and rudimentary elements of seal life (see especially for this the books of Johns Hopkins University). Besides, the unanimous and unquestioned testimony of the agents for the Government and the company shows that the fur-seals spend at least four months of the year on the Pribilof Islands.

Having found, with the American Commissioners, a *marked diminution* in the number of seals on and habitually resorting to the Pribilof Islands, the British Commissioners proceed to show that the seals are, *more numerous than ever.* They have, no doubt, demonstrated this to their entire satisfaction on pages 72 and 73 of their Report. Capt. Warren they quote as saying that he noticed no *diminution* in the number of seals during the twenty years that he had been in the business, and, if any change at all, an increase. (Sec. 403.) To the same effect, Capt. Leary, who says that in the Bering Sea they were *more numerous than he had ever seen them* (Sec. 403); while Mr. Milne, collector of customs at Victoria, reports, what others have said to him, that owners and masters do not entertain the slightest idea that the seals are scarce. (Sec. 403.) What a tribute this must be to the management of the Pribilof Islands if, notwithstanding the conceded destruction of gravid and nursing females, these statements should be true. Capt. W. Cox took 1,000 seals in four days, 100 *miles to the westward of the Pribilof Islands.* (Sec. 405.) He found the seals much more plentiful in Bering Sea than he had ever seen them before. It would have added much to the interest of Capt. Cox's statement if he had told us how many of these seals gave evidence of having left their pups at home.

The British Commissioners multiply the evidence to show that the general experience as stated to them has been that seals were equally or more abundant at sea at the time of their examination than they had been in former years. It is difficult to treat this with the respect that a report emanating from gentlemen of character and high official position should meet. Either the statement in the Joint Report is true and the assumption of an increase is untrue, or *vice versa.* In view of the evidence that these seals have no other home than the Pribilof Islands, it is plain, beyond the necessity of demonstration, *that all the seals killed by Capt. Cox and others in the Bering Sea were inhabitants of those islands*, and the testimony only goes to show that the mothers do go out to sea 100 miles or more, as is sworn to by the witnesses for the United States, and that it is while they are on the feeding grounds, or searching abroad for food, that they are captured by the Canadian poachers. If this is not so, then let the Commissioners or those advocating their views tell us where these seals slaughtered by Capt. Cox and others found their "summer habitat."

Any pretense that the seals are decreasing *at home—i.e.*, where they live through the summer, and breed, and nurse, and shed their hair—and at the same time are increasing in the sea is simply an absurdity. It would have added much to the value of the testimony of all these masters if they had not sedulously avoided stating the sex of the animals that they killed.

There is one, and one explanation only, of this, and that explanation makes the stories above quoted plausible. The pelagic sealers were engaged in hunting nursing mothers on the feeding grounds, where those animals are found in large numbers. The decrease proved, and, indeed, admitted to exist (see Joint Report), had not yet been so great as to be manifest to those sealers who were so fortunate as to fall in with a number of females either intent upon finding the food necessary to produce a flow of milk or sleeping on the surface of the water after feeding.

And here we may note another illustration of the *thesis* and its advocacy. Having satisfied themselves that pelagic sealing rather operated to increase the supply of seals, they remembered that the killing of young males was objectionable and likely to result in extermination, and thereupon discovered the fact that "a meeting of natives was held" at which the aborigines unanimously expressed the opinion that the seals had diminished and would continue to diminish from year to year (an opinion, too plain, we think, for argument), but they at once assign the reason, which is not the killing of many females, but the extraordinary fact that "*all the male seals* had been slaughtered without allowing any to come to maturity upon the breeding grounds" (Sec. 438).

Having thus proved that the seals were in a flourishing condition of increase, and that they were decreasing in an alarming degree, the conclusion is reached that the decrease is on the land and the increase in the water:

> The general effect of these changes in the habits of the seals is to minimize the number to be seen at any one time on the breeding islands, while the average number to be found at sea is, at least proportionately, though *perhaps* in face of a general decrease in the number of seals, not absolutely increased (Sec. 445 of British Commissioners' Report).

Would it be irrelevant to inquire what was the "summer habitat" of the numerous seals slaughtered by Capt. Warren, Capt. Leary, and Capt. Cox? Were they not *all* of the Pribilof family? Did not the Commissioners who quoted Capt. Cox to the effect that he had, no doubt in true sportsmanlike fashion, with a shotgun, killed 250 seals a day for four days, know that the enormous majority of these were nursing mothers, whose *pups* were starving at home?

## IX.—DESTRUCTION BY PELAGIC SEALING AND ITS EXTENT—THE REMEDY PROPOSED BY THE BRITISH COMMISSIONERS—THE TRUE AND ONLY REMEDY CONSISTS IN ABSOLUTE PROHIBITION OF PELAGIC SEALING.

It has been heretofore sought to show that the Commissioners for Great Britain in drawing up the report had endeavoured to reach a conclusion favourable to the slaughter of seals at sea, an "industry," as they call it, in which they apparently saw little that was objectionable and which they believed it to be the interest and policy of their country to protect. In the course of their examination, however, they have necessarily been furnished with facts palpably inconsistent with their theory and have been reluctantly compelled to produce proofs of the barbarous, savage, and destructive processes by which the Canadian poachers secured their prey.

(*a*) The Commissioners allude in sarcastic vein to the fact that "there is a 'remarkable agreement' found among those interested in decrying pelagic sealing, to the effect that the pelagic sealers do and must kill a large number of female breeding seals." Why this "agreement," which undoubtedly exists, should be mentioned as "remarkable," we fail to perceive, the evidence produced by the Commissioners themselves plainly showing that no discrimination is or can be made by the pelagic hunters and that they slaughter indiscriminately all the animals that appear within reach of their shotguns. They themselves admit that "a considerable proportion of gravid females" are slain (Sec. 648), and their own witnesses describe the process of skinning them on deck, in the course of which milk and blood flow freely together, while in some cases fully formed young are taken from the slaughtered mothers. Under such circumstances there is no ground for any criticism nor any reason shown why general acquiescence in such a proposition should be treated with a sneer upon the truth of the statement.

(*b*) It is *certain*, they say, that *females with milk* are *occasionally* killed at sea by the pelagic sealers (Sec. 314). That they should not be able to give the exact proportion of the pregnant and nursing females to the rest may be due to the fact that their informants, while exulting over the large slaughter that they succeeded in accomplishing in Bering Sea, do not appear to have stated how many of such breeding females they had succeeded in capturing (page 73).

(*c*) It is claimed, however, that pelagic seal-fishing is not the only cause for the decrease of the seals on the Prilibof Islands, and this is supported by a quotation to be found at page 187 of their Report, as to the probable fate of the fur-seal in America. The paragraphs relating to the objectionable features of pelagic seal-fishing seem to be omitted and indicated by asterisks, but the paper is quoted to show that driving of the seals on the island is one of the evils which may be remedied. The conclusion of Mr. Palmer, the authority thus cited, is (1) *that no seals should be killed by any one at any time in the waters of Bering Sea;* (2) that all seals driven on the islands should be killed; none, he says, should be driven and again allowed to enter the sea (p. 189). Certainly Mr. Palmer's paper is very interesting and if his facts and conclusions are adopted *pelagic* "*seal-fishing*" must be prohibited. "The killing of seals as conducted on the islands," he says, "is as near theoretical perfection as it is possible to get it. They are quickly dispatched and without pain. One soon recognizes, as in the killing of sheep, that in the quickness and neatness of the method lies its success, all things considered" (p. 187). This certainly does not agree with the "sportsmanlike" view of the British Commissioners, but embodies what we might call the humane and common-sense aspect of the subject by showing that, so far from the desirability of giving the seal "a chance for its life," there should be a selection made in each case and the animal should be painlessly and immediately slaughtered. The object should be, not to provide sport to adventurous men and keen hunters, but to secure as many animals as possible with humanity and a due regard to the preservation of the race.

(*d*) It is respectfully submitted that as between the two systems, one of which is "theoretically perfect" and in the course of which the animals are selected and "promptly and neatly killed," on the one hand, and indiscriminate sealing at sea on the other, there can be no room for hesitation. But the evident and unquestionable superiority of the methods adopted on the islands consists, also, in the fact that it is by its nature susceptible of indefinite improvement. No argument is needed to show that the "theoretical" perfection may with care become "practical" perfection, and that, if driving be really open to the objections made by Mr. Palmer it is not impossible—indeed it must be comparatively easy—to remedy them in the manner suggested by himself or otherwise. In the preservation of pelagic sealing all concur that it is impossible to select the seals which it is desirable to kill and that the circumstances and nature of the animal are such that in most cases the female pregnant or giving suck must fall a victim to the weapons of the poacher. Indeed the British Commissioners themselves state (Sec. 648) that it is *generally admitted* that a *considerable portion* of gravid females are found among the seals taken in the early part of each sealing season. Between two such systems, we repeat, there can be no hesitancy as to which should be preferred, the one based on humane and intelligent principles, and which the interest of the parties concerned would naturally make as perfect as possible, the other, which by its very nature leads to brutality and undue destruction, and which is profitable only when it is cruel and indiscriminate. These considerations are reënforced by the very significant fact that the *breeding females when found at sea are always pregnant or nursing, and frequently both.* This follows from the undisputed facts (1) that the period of gestation is over eleven months; (2) that they reach the islands when on the point of delivery; (3) that they remain there until fertilized, and (4) that during the period of their stay they nurse the young, which depend wholly upon their milk for sustenance.

(*e*) The British Commissioners' suggestion as a remedy for the slaughter of the mothers and nurses, contained in section 155, subdivision c, does not seem to be one which can have been very seriously entertained by themselves. They suggest a provision that a close season be provided *extending from the 15th of September to the 1st of May in each year*, during which all killing of seals shall be prohibited, with the additional provision that no sealing vessels shall enter Bering Sea *before the 1st of July in each year.* They state as a fact in section 649 that "Bering Sea is *now usually entered* by the pelagic sealers between the *20th of June and the 1st of July and in Bering Sea the same conditions hold*" that are described in section 648, namely, that a *considerable portion of gravid females are found among the seals taken in the early part of each sealing season.* They also say that the pregnant females begin to "bunch up" and to travel fast toward Bering Sea, at the latest, *the 1st of June.* In other words, *the best season for killing nursing and pregnant females in the Bering Sea is precisely the season recommended by the commissioners as the proper one for allowing the slaughter.* Surely the pelagic sealers could ask no better protection for their "industry" in Bering Sea than this, nor could any better method of continuing the abuse and hastening the destruction be devised than opening the catch to the pelagic sealers at their favorite season.

To understand this extraordinary recommendation fully, sections 648 and 649 of the British Commissioners' Report should be read together. It may be taken for granted that the pelagic sealers need not be told when the hunting season in Bering Sea is at its best. Experience has taught them, and they have profited by the instruction, that their operations in Bering Sea could be most profitably conducted *during the months of July and August*. Hence it has been their usage to *enter Bering Sea between June* 20 *and July* 1 (Sec. 649). They would probably not rebel against a possible and occasional delay in opening the season, by ten days. The nursing mothers would be still especially open to capture, and would still constitute the staple article of their "industry." In their search for food and in the instinctive confidence which the mothers of dependent offspring almost universally exhibit the seals would be less "wary" than at other seasons, and good shots might still carry on their mission of destruction with the superadded comfort that their business was made reputable by law. As if to make even this small restriction upon the liberty of the pelagic sealer less objectionable, he is reminded that "after about the 20th of May or at the latest the 1st of June, very few females with young are taken." (Sec. 648.) His loss would thus be trifling so far as Bering Sea as a field of profitable operation is concerned. It seems that in fine sealing weather the schooners can not keep up with the females. Hence they are not all slaughtered. At this time, after May 20, or June 1, the pregnant females begin to "bunch up" and the catch consists chiefly of young males and barren females (Sec. 648). Why, then, even this restriction? When are the breeding females captured? Is it really intended to assert that the only injury done is that "at a later date in the summer *a few females in milk*, and therefore presumably from the breeding places on the islands, are occasionally killed, but no large numbers"? So extraordinary a statement made in the face of overwhelming proofs requires no discussion. The British Commissioners should have vouchsafed information as to the thousands of *nursing* mothers killed during the season from July to September and should have told us whence they came and where was their "summer habitat." It is very likely, as they assert, that *very few females with young* are taken after June 1. The obvious reason is that they have become nursing mothers by the 1st of July, those that escaped the shotgun, the rifle, the spear, and the gaff having found temporary shelter and protection on the islands.

(*f*) Although we have laid much stress upon this in other parts of this argument, the subject is so important that we again recur to it and call attention once more to the admissions and inconsistencies in the British Commissioners' Report. The Commissioners in section 612 exhibit much indignation at the free use that has been made of the appellation "poachers" as applied to the pelagic sealers in general and to Canadian sealers in particular. This, they say, has been done with the obvious purpose of prejudicing public opinion. They then proceed to claim that "adventurers" from the United States are mainly responsible for the reduction of seals brought about in the southern seas. The killing of seals, they say, has always and everywhere been carried out in the indiscriminate, ruthless, and wasteful manner described in detail in several of the works cited in their Report, and in most cases a greater part of the catch has consisted of females. (Sec. 612.) It is certainly no part of the purpose of counsel for the United States to defend "adventurers" guilty of these barbarous practices, whatever the nation to which they belong. It is rather a question of humanity than of nationality, and the United States would not hesitate to undertake and to assure the repression of practices which cannot be described in overharsh terms if their own citizens alone were engaged in the business. It is only to prevent "the indiscriminate, ruthless, and wasteful slaughter" by persons who claim the protection of a foreign flag that these methods of arbitration are resorted to.

But the waste of the seals lost, in addition to the destruction of the fetus or of the pup, as the case may be, is shown to some extent by the Report of the Commissioners for Great Britain. We refer especially to sections 613, 614, 615, 617, 618, 619, 620, 621.

The discrepancy between the two classes of statements given by themselves is very marked. The agents of the United States, captains in the United States Navy, the superintendents, and others testify that 40 to 60 per cent. of the seals are lost. It would seem, however, from the testimony in defence of pelagic slaughter that old hunters are much more successful than the young ones. Green hands, says the captain of the *Eliza Edwards*, might lose as much as 25 per cent. of the seals shot, but experienced hunters would bag their game to the extent of 95 per cent.; that is to say, they would lose but 5 per cent. of the females shot. (Section 625.) The number of green hands on board the schooner *Otto*, on which Robert H. McManus, a journalist, was a passenger, sailing for his health, must have been very great in proportion to the whole crew. It seemed to him that they did not get over one seal to every hundred shot at. (Vol. II, p. 335, of the Appendix to the Case of the United States.)

We shall now lay before this High Tribunal additional testimony as to the nature and extent and effect of pelagic sealing. The extracts and references about to be given may seem monotonously cumulative, but it is important to show, otherwise than by mere affirmation, how far the existence of the herd is menaced and how soon extermination may be expected unless prompt and efficient measures of redress be adopted.

The evidence of credible witnesses, dealing neither in generalities nor in speculation, leaves no doubt as to the appalling extent of the massacre. It is impossible to assume that the witnesses produced for the United States deliberately perjured themselves as to numbers, dates, and distances. Even if any reason were given for throwing a suspicion upon their character, the reticence of many of the witnesses examined by the British Commissioners as to the sex of the animals killed is significant. It is to the credit of these persons that while they did not hesitate to state that they had slain large numbers of seals in Bering Sea without discrimination, they refrained from giving any precise data as to the sex of the animals that they captured.

If, however, it is desired to know how far this ruthless and exterminating process is carried, the desire for information may readily be gratified.

The sealing schooner *Favorite*, McLean, master, according to Osly, a native sealer who went to the Bering Sea on her as a hunter, captured 4,700 seals, most all of which were cow seals giving milk. They were captured at a distance of about 100 miles from the Pribilof Islands.

In 1888 the same hunter was on board the *Challenger*, Captain Williams, master. They were less successful and caught only about 2,000 seals, most of which were cows in milk.

In 1889, he again went to sea on the schooner *James G. Swan*, but the seals were not so abundant; they were rapidly decreasing. (Appendix to the Case of the United States, Vol. II, pp. 320, 391.)

Niels Bonde (*ibid.*, p. 315), of Victoria, British Columbia, was a seaman on board the schooner *Kate*. He went to the Bering Sea, arriving there in July, and left in the latter part of August. They had caught about 1,700 seals in that time between the Pribilof Islands and Unalaska. These were caught from 10 to 100 or more miles off St. George Island. The seals caught in Bering Sea were females that had given birth to their young. He often noticed milk flowing out of their breasts. He had seen live pups cut out of their mothers and live around on the decks for a week.

Peter Brown (*ibid.*, p. 377), a native, part owner of a schooner for abou seven years and owner of the *James G. Swan* for about three years; hunted in Bering Sea in 1888; the catch was nearly all cows that had given birth to their young and had milk in their teats. His people hunted with the spear and therefore did not lose many that they hit.

Thomas Brown, No. 2 (*ibid.*, p. 406), made a sealing voyage to the North Pacific and Bering Sea on the *Alexander*. They caught 250 seals before entering the sea, the largest percentage of which were females, most of them having young pups in them. He saw some of the young pups taken out of them. They entered the sea about the 1st of May and caught between 600 and 700 seals, from 30 to 150 miles off the seal islands. Four out of five were females in milk. He saw the milk running on the deck when he skinned them. They used mostly shotguns, and got on the average 3 or 5 out of every 12 killed and wounded. Evidently these were what has been termed "green hands."

Charles Challall, who has been heretofore quoted, a sailor in 1888 on the *Vanderbilt*, in 1889 on the *White*, and in 1890 on the *Hamilton*, gives his experience, which may be found at pages 410 and 411. They captured a great many seals on the fishing banks just north of and close by the Aleutian Archipelago. Most of the seals they killed going up the coast were females heavy with pup. He thinks nine out of every ten were females. At least 7 out of 8 seals caught in the Bering Sea were mothers with milk.

Circus Jim (*ibid.*, p. 380), a native Makah Indian, captured a great many cow seals that were giving milk. Most of the seals he caught in the sea were giving milk. His theory as to the decrease of the animal, which he states as an undoubted fact, is that the white hunters had been hunting them so much with guns. "If so much shooting at seals is not stopped they will soon be all gone."

James Claplanhoo (*ibid.*, p. 381), a native Makah Indian, evidently found the business profitable, for he was the owner of the schooner *Lottie*, of 28 tons burden. Formerly he used nothing but spears in hunting seals, but he had since that resorted occasionally to the use of a gun. He says that about one-half of all the seals that he had captured in the Sea or on the coast were full grown cows with pups in them. In 1887, about the first of June, he went into Bering Sea in his own schooner, the *Lottie*, and hunted about sixty miles off the Islands, and secured about 700 seals himself, all of which were cows in milk. These cows had milk in their breasts but had no pups in them. He returned to Bering Sea in his own boat, the *Lottie*, in 1889, and also in 1891, and sealed all the way from 100 to 180 miles from the St. George and St. Paul Islands. The catch of those two years was about the same as those caught in 1887, that is, mostly females that had given birth to their young and were in milk.

Louis Culler (*ibid.*, p. 321). According to him the white hunters in 1888 must have been nearly all "green hands," for they did not secure more than two or three out of every 100 shot. He was aboard the *Otto* in 1891, on board of which were two newspaper correspondents, King-Hall, representing the New York Herald, and Mr. McManus, of Victoria. They entered the sea through the Unamak Pass and captured therein about 40 seals, most all of which had milk in their breasts. After taking these seals they returned to Victoria, British Columbia, about the 25th of September.

John Dalton was a sailor and made a sailing voyage to the North Pacific and Bering Sea in 1885 on the schooner *Alexander*, of which Captain McLean was master. They left Victoria in January and went south to Cape Flattery and Cape Blanco, sealing around there about two months, when they went north, sealing all the way up to the Bering Sea. They had between 100 and 300 seals before entering the sea. Most all of them were females with pups in them. They entered the sea about June and caught about 900 seals in there, two-thirds of which were mother seals, with their breasts full of milk. He saw the milk flowing on the decks when they skinned them.

Alfred Dardean (*ibid.*, p. 322), a resident of Victoria, British Columbia, and during the two years preceding the making of his deposition, which was in April, 1892, he had been a seaman on the schooner *Mollie Adams*. They left Victoria, British Columbia, on the 27th of May, 1890, and commenced sealing up the coast, toward Bering Sea. They entered Bering Sea through the Unamak Pass about July 7, and sealed around the eastern part of Bering Sea until late in the fall. They caught over 900 seals before entering the sea, and the whole catch during that year was 2,159 skins. Of the seals that were caught off the coast fully ninety out of every one hundred had young pups in them. The boats would bring the seals killed on board the vessel, and they would take the young pups out and skin them. If the pup was a good one they would skin and keep it for themselves. He had eight such skins himself. Four out of five, if caught in May or June, would be alive when they cut them out of the mothers. They kept one of them nearly three weeks alive on deck by feeding it on condensed milk. One of the men finally killed it because it cried so pitifully. They got only three seals with pups in them in the Bering Sea. Most all of them were females that had given birth to their young on the island, and the milk would run out of the teats on the deck when they were skinned. They caught female seals in milk more than 100 miles off the Pribilof Islands.

The same witness states that they lost a good many seals, but he does not know the proportion that was lost to the number killed. Some of the hunters would lose four out of every six killed. They tried to shoot them while asleep, but shot all that came in their way. If they killed them "too dead" a great many would sink before they could get them, and these were lost. Sometimes they could get some of them that had sunk by the gaff hook, but they could not get many that way. A good many were wounded and escaped only to die afterward.

Frank Davis (*ibid.*, p. 383), a native Indian of the Makah tribe, was sealing in the Bering Sea in 1889. He says, agreeing in this with all the other witnesses, that nearly all of the full-grown cows along the coast have pups in them, but the seals that he caught in Bering Sea were most all cows in milk.

Jeff Davis (*ibid.*, p. 384), and also a native Makah Indian, says that most of the seals that were captured there that season—that is, in 1889—were cows giving milk.

Capt. Douglass (*ibid.*, p. 420): His testimony is that a very large proportion of the seals killed along the coast and at sea, from Oregon to the Aleutian Islands, are female seals with pups; in his judgment not less than 95 per cent., as has been quoted heretofore. He also says that the proportion of female seals killed in Bering Sea is equally large.

Peter Duffy (*ibid.*, p. 421). By occupation a seaman on board the *Sea Otter*, Captain Williams, master. They left San Francisco and fished up the coast until they entered Bering Sea in July, and sealed about the sea until they were driven off by the revenue cutter *Corwin.* From there they went to the Copper Islands. The whole catch amounted to nine hundred skins, and most of them were killed with rifles. They only got one out of about eight that they shot at, and they were most all females giving milk or in pup. When they cut the hide off you could see the milk running from the breasts of the seals. The second year they were more fortunate and got over 1,300 skins; some of them were cows with pups in them, and almost all of the rest were cows giving milk, and some of the latter were killed as far from the rookeries as Unimak Pass.

William Fraser (page 426), of San Francisco, had made three trips to the North Pacific and Bering Sea within the last six years. His business was that of a laborer; he acted as a boat-puller. They used shot-guns and killed about 300 seals in the North Pacific. Most of the females killed had unborn pups or were cows giving milk. The next trip that he made was on the *Vanderbilt*. They did not enter the Bering Sea on that trip either. They got about 350 seals, almost all females. Finally he made a trip on the *C. G. White*, but does not know if he was on the American side or not. They killed about 600 seals on that trip, nearly all females. He noticed when they skinned them that they were females in milk, as the milk would run from their breasts on to the deck.

John Fyfe (*ibid.*, p. 429), of San Francisco, a sealer and boat-puller on the schooner *Alexander*, McLean, master. They entered Bering Sea about April and got 795 in there, the largest part of which were mother seals in milk. When they were skinning them the milk would run on the deck. Some were killed 50 to 100 miles off the seal islands. When they shot the seals dead they would sink and they could not get them.

Thomas Gibson (*ibid.*, p. 431) had been engaged in sealing for ten years. He gives his experience in detail and the number of seals that he killed in each season. He says:

> I did not pay much attention to the sex of seals we killed in the North Pacific, but know that a great many of them were cows that had pups in them, and we killed most of them while they were asleep on the water. I know that fully 75 per cent. of those we caught in the Bering Sea were cows in milk. We used rifles and shot-guns and shot them when feeding or asleep on the water. An experienced hunter, like myself, will get two out of three that he kills, but an ordinary hunter would not get more than one out of every three or four that he kills.

Arthur Griffin (*ibid.*, p. 325), a seafaring man who resides at Victoria, British Columbia, sailed from that place on February 11, 1889, as a boat-puller on the sealing schooner *Ariel*, Buckman, master. She carried six hunting boats and one stern boat and had a white crew who used shot-guns or rifles in hunting seals. They began sealing off the northern coast of California and followed the sealing herd northward, capturing about 700 seals in the North Pacific Ocean, two-thirds of which were females with pup; the balance were young seals, both male and female. They entered Bering Sea on the 13th of July, through the Unimak Pass and captured between 900 and 1,000 seals therein, most of which were females in milk. They returned to Victoria on the 31st of August, 1889.

It will be observed here that Arthur Griffin's experience and success would not lead him probably to object to the *modus operandi* suggested by the British Commissioners. His operations by which 900 or a 1,000 seals, mostly females in milk, were secured in the brief space of six weeks, could be carried on not only with equal propriety, but with the additional advantage of being lawful.

His experience in 1889 was not exceptional. He went out again in 1890 in the *E. B. Marvin*, McKiel, master. They again captured between 900 and 1,000 seals on the coast, most of which were females with pups. They entered the sea on July 12 through Unimak Pass and captured about 800 seals in those waters, about 90 per cent. of which were females in milk. His experience was that a good hunter will often lose one-third of the seals he kills. A poor hunter will lose two-thirds of those he shoots. On an average hunters will lose two seals out of three of those they shoot.

M. A. Healey (*ibid.*, p. 27). Capt. Healey, an officer in the United States Revenue Marine service, on duty for nearly the whole of twenty-five years in the waters of the North Pacific, Bering, and Arctic seas. He speaks from experience and says:

> My own observation and the information obtained from seal hunters convince me that fully 90 per cent. of the seals found swimming in the Bering Sea during the breeding season are females in search of food, and the slaughter results in the destruction of her young by starvation. I firmly believe that the fur-seal industry at the Pribilof Islands can be saved from destruction only by a total prohibition against killing seals, not only in the waters of Bering Sea, but also during their annual immigration northward in the Pacific Ocean.
>
> This conclusion is based upon the well-known fact that the mother seals are slaughtered by the thousands in the North Pacific while on their way to the islands to give birth to their young, and extinction must necessarily come to any species of animal where the female is continually hunted and killed during the period required for gestation and rearing of her young; as now practiced there is no respite to the female seal from the relentless pursuit of the seal-hunters, for the schooners close their season with the departure of the seals from the northern sea and then return home, refit immediately, and start out upon a new voyage in February or March, commencing upon the coast of California, Oregon, and Washington, following the seals northward as the season advances into the Bering Sea.

James Kean (*ibid.*, p. 448), a resident of Victoria, British Columbia, and seaman and seal hunter, gives his experience. He went seal-hunting in 1889 on the schooner *Oscar and Hattie.* He left Victoria in the latter part of February and went off south to the Columbia River, and commenced sealing off there and followed the herd along the coast up to Bering Sea, arriving there some time in June. They captured somewhere about 500 seals before entering the sea. There were a good many females among them. The old females had young pups in them. He saw them taken out and a good many of them skinned. They entered the sea and caught about 1,000 in there. Sometimes they were over 150 miles off the seal islands; sometimes they were nearer. He paid no attention to the proportion of females, but he knows that they skinned a great many that were giving milk, because the milk would run from their breasts onto the deck while they were being skinned. They killed mother seals in milk over 100 miles from the seal islands. They generally got them when they were asleep on the water. He went out again in the *Walter Rich* in 1890, with very much the same experience. He thinks that he got half of what he killed and wounded, but he did not believe that the green hunters get more than one out of every four or five that they kill.

For detailed and circumstantial evidence that the proportion of females taken to males was enormous, and that nearly all of these when taken in Bering Sea were nursing sows, see: William Hermann, page 445; Norman Hodgson, page 366; O. Holm, page 366; Alfred Irving, page 356; Victor Jacobson, page 328.

James Jamieson (*ibid.*, p. 329): This witness, Jamieson, had been sailing-master of several schooners and had spent six years of his life sealing. He testified that he always used a shot-gun for taking seals; that over half were lost of those killed and wounded. A large majority of the seals taken on the coast were cows with pups. Once in a while an old bull is taken in the North Pacific Ocean. No discrimination was used in killing seals, but everything was shot that came near the boat in the shape of a seal. The majority of seals killed in Bering Sea are females. He had killed female seals himself 75 miles from the islands, and they were full of milk.

To the same effect as to the large proportion of females nursing their young, see James Kennedy (*ibid.*, p. 449).

James Kiernan, who had been engaged in sealing since 1843:

> My experience, [he says,] has been that the sex of the seals usually killed by hunters employed on vessels under my command, both in the

North Pacific Ocean and Bering Sea, were cows. I should say not less than 80 per cent. of those caught each year were of that sex. I have observed that those killed in the North Pacific were mostly females carrying their young, and were generally caught while asleep on the water, while those taken in the Bering Sea were nearly all mother seals in milk, that had left their young and were in search of food. My experience convinces me that a large percentage of the seals now killed by shooting with rifles and shotguns are lost. My estimate would be that two out of every three killed are lost.

See the testimony of Francis R. King-Hall, the journalist.

Edward Nighl Lawson, a resident of St. Paul's, Kadiak Island, Alaska (*ibid.*, p. 221), killed females in milk in Unimak Pass, and even out in the Pacific Ocean 200 miles from land. They can not distinguish between the sex of fur-seals in the water; on the contrary, everything in sight is taken, if possible, except large bulls, whose skins are useless. He recommends, in order to prevent the extermination of the fur-seal species, that a close season in the North Pacific Ocean and in Bering Sea should be established and enforced from April 1 to November 1 in each year.

Abial P. Loud (*ibid.*, p. 37), a resident of Hampden, Me., special assistant treasury agent for the seal islands in 1885, 1886, 1888, and 1889.

William McIsaacs (*ibid.*, p. 450).

Capt. James E. Lennan (*ibid.*, p. 369), master mariner of eight years' experience.

William McLaughlin (*ibid.*, p. 451), boat-puller on board the *Triumph.*

Robert H. McManus (*ibid.*, p. 335), a journalist, whose qualifications have been spoken of heretofore, gives, on pp. 337 and 338, extracts from his diary. This deposition should be read in whole.

Patrick Maroney (*ibid.*, p. 464), of San Francisco, a seaman.

Henry Mason (*ibid.*, p. 465), of Victoria, British Columbia.

Moses (*ibid.*, p. 309), a native Nitnat Indian, gives his experience in 1887 on the schooner *Ada.* They sealed around Unalaska, but did not go to the Pribilof Islands. They caught 1,900 seals. Most all of them were cows in milk, but when they first entered the sea they killed a few cows that had pups in them. The next year they secured only 800, and the year following eight or nine hundred. The seals caught were mostly cows with milk.

John O'Brien (*ibid.*, p. 470), of San Francisco, a longshoreman, made a sealing voyage to the North Pacific and Bering Sea on the Schooner *Alexander*, which sailed from Victoria in January, 1885. He was a boat-puller. They headed north into the Bering Sea which they entered at the latter end of May. Up to that time they had caught 250 or 300 seals of which 80 per cent. were females. After they entered the Bering Sea they caught about 700 seals, most all of them being females in milk. He also shows that there is a very considerable waste of life from killing or wounding and losing animals.

John Olsen (*ibid.*, p. 471) of Seattle, Wash., a ship-carpenter, entered the Bering Sea about the 5th of June, 1891, on board the *Labrador*, Capt. Whiteleigh, commander. They were ordered out of the sea on the 9th of June. In going up the coast to Unimak Pass they caught about 400 seals, mostly females with young, and put their skins on board the *Danube*, an English steamboat at Allatack Bay, and after they got into the Bering Sea caught about 220. After entering the sea they got one female with a very large pup, which he took out alive and which he kept for three or four days when it died as it would not eat anything. All the others had given birth to their young and their breasts were full of milk. He also states how large a loss is made by failure to recover the animals that are killed.

Osly (*ibid.*, p. 391), a native Makah Indian, went to the Bering Sea in 1886 on board the *Favorite*, McLean, master. They captured about 4,700 seals, almost all of which were cows giving milk. Four years before that he had gone to Bering Sea as a hunter in the sealing schooner *Challenger*, Williams, master. There were 3 white men in each boat and 2 Indians in a canoe. We caught about 3,000 seals, most of which were cows in milk.

William Short (*ibid.*, p. 348), of Victoria, British Columbia, is by occupation a painter. On January 14, 1890, he sailed as a boat-puller from Victoria on the British sealing schooner *Maggie Mac*, Dodd, master. She carried six sealing boats that were manned by three white men each, who used breech-loading shotguns and rifles. On the 12th of July they entered the sea through the Unimak Pass. Before this they had captured 1,120 seals on the coast. They lowered their boats on the 13th and captured about 2,093 seals in those waters and then returned to Victoria on the 19th of September. In July, 1891, he sailed out of the port of Victoria as a hunter on the British sealing schooner *Otto*, O'Reily, master. Failing to procure the Indian crew of sealers that they had expected, they returned to Victoria, after proceeding up the coast, on the 1st of August. While cruising along the coast their principal catch was females with pups. Fully 90 per cent. of all seals secured by them while in the Bering Sea were cows with milk; that is to say, out of 2,093 all but about 300 were nursing mothers.

Profitable as the business appears to have been to Mr. Short, he is candid enough to say that in his opinion—

> It is a shame to kill the female seal before she has given birth to her young. Pelagic sealing in the North Pacific Ocean before the middle of June is very destructive and wasteful and should be stopped. * * * Sealing in the sea should be prohibited until such a time as the pup may have grown to the age at which it may be able to live without nurse from its mother.

James Sloan (*ibid.*, p. 477), of San Francisco, by occupation a seaman, made three voyages to Bering Sea, in 1871, in 1884, and in 1889. A great many of the females that they killed had their breasts full of milk, which would run out on the deck when they skinned them. In 1889 they went to the Okhotsk Sea and sealed there about two months. They got about 500 seals, of which more than one-half were females, and the most of them had pups in them. They entered Bering Sea about the 17th of May and caught about 900 seals. Most of them were mother seals.

Mr. Sloan predicts an early extermination of the seals unless the destructive processes are stopped. As he says, the hunters kill them indiscriminately and all the hunters care about is to get a skin.

See, also, the testimony of Fred Smith (*ibid.*, p. 349), of Victoria, a seal hunter.

Of Joshua Stickland (*ibid.*, p. 349), also of Victoria, a seal hunter who declares that out of 111 seals killed by him in the last year he killed but three bulls.

John A. Swain (*ibid.*, p. 350), of Victoria, a seaman, gives his experience in 1891. He was on board the steamer *Thistle*, Nicherson, master. They caught about 100 seals. They were all females that had given birth to their young. In 1892 they caught 270, most of them pregnant females which were caught along the coast.

Theodore T. Williams (*ibid.*, p. 491), an intelligent gentleman, by profession a journalist, employed as city editor on the San Francisco Examiner, makes a very interesting deposition. In pursuit of his profession he had not only had occasion to make extended inquiries into the fur-sealing industry of the Aleutian Islands and the North Pacific, but had gone to the North and had made a complete and exhaustive examination of the open-sea sealing, its extent, probable injury, etc. The perusal of the whole of this very interesting document is recommended. As the result of his investigation in the Bering Sea and North Pacific he asserts the following facts:

First. That 95 per cent. of all the seals killed in the Bering Sea are females.

Second. That for every three sleeping seals killed or wounded in the water only one is recovered.

Third. For every six travelling seals killed or wounded in the water only one is recovered.

Fourth. That 95 per cent. at least of all the female seals killed are either in pup or have left their newly-born pup on the islands, while they have gone out into the sea in search of food.

The result is the same in either case. If the mother is killed the pup on shore will linger for a few days, some say as long as two or three weeks, but will inevitably die before winter. All of the schooners prefer to hunt around the banks where the female seals are feeding, to attempt to intercept the male seal on their way to and from the hauling grounds.

This overwhelming and practically uncontradicted evidence certainly justifies the statement of the British Commissioners as to the "remarkable agreement" upon this subject. How the facts could be disputed without impeaching witnesses taken from every class of society where knowledge could be found, it is impossible for us to conjecture. Officers from the Navy of the United States; British sea captains as well as American seamen, journalists, natives, all concur as to the fearful destruction which is going on. It is not possible to read the testimony, even making far more allowance for exaggeration than the nature of the case will justify, without reaching the conclusion that pelagic sealing must be stopped or all hope of preserving the herd abandoned. Palliation, compromise, and mitigating processes are out of the question. The outrage must be cut at the root and its continuance made impossible. Females that are pregnant eleven months of the year, and nursing mothers three or four months, must be left undisturbed, and if, as all agree, it is impossible to discriminate in pelagic sealing between the mothers and the males, then the other alternative is inexorably before us, and that is absolute interdiction.

(*g*) The principal fact that a decrease, alarming and continuous, has been noted, is by the proofs and admissions made evident. It required no proofs, as it is conceded by the Commissioners on both sides to exist, and it is for the purpose of remedying the evil that this Arbitration has been entered into. It is claimed on the part of the United States that the diminution which threatens extermination is *wholly* due to *pelagic sealing*, a practice which does not permit the hunter to spare the gravid or nursing females: while at the same time, and coöperating with this principal source of undue destruction, the methods used by the hunters frequently result in the death and simultaneous loss of the animal. It need hardly be said, that *prima facie*, to such a system must be attributable the undue destruction which it is desired to prevent. Those who undertake the defense of such methods and of such a system can not complain if the burden of proof is placed upon them of justifying a course which has received the condemnation of mankind. It is difficult to perceive any good reason why the ordinary and usual rules that have always been followed as essential to the preservation of a species should be dispensed with in the case of the fur-seals. It matters little whether it is an absurdity or scientifically correct to designate them as essentially or naturally or wholly pelagic. Important controversies between enlightened nations will not turn upon nice questions of scientific nomenclature. The animal whose existence is at stake is useful to man, and it is therefore the interest and policy, as it will be to the honor of both nations, to preserve it. The time has long since gone by when the selfishness of nations may have been the controlling factor in such debates. But were it otherwise, Great Britain will suffer as seriously as the United States from the extermination of a herd of seals which the United States alone can preserve, which the United States alone can foster, guard, and protect, because it happens that the vital functions of procreation and delivery are performed on its soil. The United States may and will discharge this duty, to its own people and to the world, provided its efforts are not baffled and its beneficent action neutralized by the indiscriminate slaughter of which it complains.

That the Government of the United States has power, both in law and in fact, within the limits of its own jurisdiction no one disputes, but the suggestion is made that the methods adopted on the islands which constitute the only land resort of the seals are imperfect in practice while perfect in theory. Certain objections are made to show that while care is taken to preserve the female from destruction, so many young males have been slaughtered that the necessary vitality is lacking in the service of the females. Thus it is claimed that the two sources combine to endanger the permanency of the seal family, admitted and undue destruction at sea and unwise or excessive killing on the islands. Conceding for the sake of argument, and only for the argument, that this is true, it must be apparent that the necessity of preventing pelagic sealing is only the more pressing, in the interest of the industry which it is desired to conserve. The methods of the United States may be faulty, but it should not be forgotten that the Government is especially interested in maintaining an industry which belongs to itself. The faults imputed are, after all is said, faults of detail and execution, which do not in any manner affect the principle adopted. They are susceptible of remedy, and it is idle and absurd to suppose that a valuable commerce, susceptible of expansion by judicious methods, will be wantonly suffered to go to ruin. Self-interest, if no higher motive, may be trusted to improve the means now in use, in so far as they may require improvement; experience will constantly throw its light upon the best means of performing the duty, while the apprehension of loss will stimulate the efforts of those most nearly concerned in the financial success of the business now carried on at the Islands.

But it is not, in fact, admitted that any such objections exist. The number of males killed did turn out to be excessive and was therefore reduced. This, however, only became manifest after the ruthless destruction at sea had begun to be felt on the Islands. That destruction is only limited by the capacity of the destroyers. They profess no scruples and they show no mercy. Their "legitimate business" requires courage and skill, it is said, but it is incompatible with the ordinary feelings of humanity. Present gain is the only object in view. The poachers' horizon is limited by the season's catch. Is it not an insult to common sense to deny that the pursuit of pregnant females and the slaughter of nursing mothers on their feeding grounds are wholly, absolutely, brutally inconsistent with any system that requires moderation, self-denial and humanity? Leaving out all other questions as irrelevant, is it not enough for the United States to say, "We can preserve for the benefit of the world the animal which your poachers are destroying; you can only do it by a prohibition of methods which you would not for an instant tolerate in analogous cases within your jurisdiction. Of what avail are small criticisms upon our system of protection when we are so largely concerned in carrying them to the point of the highest perfection?"

When suggestions are asked as to *any other way* of repressing or circumscribing this destructive slaughter, the British Commissioners propose as a remedy that Bering Sea be closed when sealing is unprofitable, and opened during the season when the horrors and the profits of the business both reach their climax. The language of the Counter Case of the United States, commenting upon this extraordinary suggestion, is couched in singularly moderate terms:

The recommendation by the Commissioners of a series of regulations such as those above considered, is clearly indicative of the bias and partisan spirit which appear in nearly every section of their Report (p. 128).

This subject is treated at length in the Counter Case (p. 125) and also in another part of this argument (*ante*, pp. 190–214) ; it need not be dwelt upon here.

In conclusion it is submitted, as the facts show that pelagic sealing by its very nature leads to and necessarily depends for success upon indiscriminate slaughter, that the females killed are with rare exceptions, either gravid or nursing mothers and form a large proportion of the pelagic catch ; that the slaughter of a breeding female of necessity involves the destruction of the nursing pup at home as well as of the unborn fetus, thus destroying three animals at one blow; that the only practical and intelligent method of preserving the race is to stop pelagic sealing, leaving the United States to continue and to improve, if possible, those measures best calculated to secure an end which it is to the interest of both parties to reach. In other words, the experience of men has taught that the preservation of the breeding female was and is the only means of preserving and perpetuating the race. Until it has been shown that the animal does not share the conditions of other animals born and suckled on land, the usual means of preserving them must be adopted.

Unless these propositions are conceded, the hope of preserving the fur-seals of the Pribilof Islands must be abandoned. Present greed is not controlled by possibilities of remote loss. The South Sea seals and their fate have taught the world a lesson which the United States are seeking to improve in the common interest of mankind. They will succeed if this High Tribunal by its decision shall prevent practices repugnant to the growing humanity of the age.

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The foregoing statement of facts has been prepared in part with the aid of a collated edition of the testimony presented with the Case of the United States, and which is herewith submitted to the Tribunal of Arbitration as an Appendix to the printed argument of counsel.

F. R. Coudert.

## SEVENTH.

### POINTS IN REPLY TO THE BRITISH COUNTER CASE.

Since the preparation of the Argument on the part of the United States, on the facts as so far appearing, the British Counter Case has been delivered. It contains a large quantity of matter concerning the nature and habits of the fur-seals, the methods and characteristics of pelagic sealing, and the methods of dealing with the seals at the breeding places, which matter, so far as it is relevant at all, is relevant to the question of the alleged property interest and rights of defense of the United States, and to the regulations which may be necessary in order to prevent the extermination of the animal.

This matter is accompanied with a protest (page 3), that, so far as matter relevant only to the question of regulations is concerned, its introduction before the Arbitrators is at present improper, and that it has been incorporated into the Counter Case without prejudice to the contention on the part of Great Britain, that the Arbitrators can not consider the question of regulations until they have adjudicated upon the five questions enumerated in Article VI of the treaty.

The counsel for the United States conceive that there is no ground upon which such an interpretation of the treaty can be supported. That interpretation assumes that there are to be two separate and distinct hearings and two separate and distinct submissions of proofs. There is absolutely nothing in the treaty to warrant such a view, and the distinct provision respecting the Cases and Counter Cases, their contents, the times when they are to be submitted, the preparation of the arguments, the times when they are to be submitted, when the hearing is to begin, and when the matter is finally to be decided, all point to the conclusion that there is to be but one hearing, one submission of evidence, one argument, and one determination.

It is indeed contemplated by the treaty that in a certain contingency it may not be necessary for the Tribunal to consider the question of concurrent regulations. This, however, simply involves a condition exceedingly common in judicial controversies, that several questions may be made the subject of trial at the same time, and yet the nature of the decision be such as to dispense with the necessity of determining all of them.

Assuming that the interpretation of the treaty insisted upon by the counsel of the United States is the correct one, the procedure adopted on the part of the British Government is wholly irregular and unauthorized, and the matter thus irregularly sought to be introduced before the Tribunal should be excluded from its view. Otherwise the Government of the United States would be placed under a disadvantage to which it should certainly not be subjected.

In the first place, all the testimony and proofs, which bear alone upon the question of regulations, would come before the Tribunal without any opportunity on the part of the United States for making an answer to it. No such possibility is contemplated by the treaty, nor should it be allowed. No proceeding is entitled to the name of a judicial one which allows one party to introduce proofs without giving to the other an opportunity to meet and contradict them.

There is another disadvantage scarcely less onerous: The government of Great Britain in thus waiting until the proofs of the United States had been offered secured to itself the very great and unjust advantage of obtaining a knowledge of its adversary's Case before committing itself to its own view. It was thus enabled to withhold evidence which it would otherwise have introduced, and to give evidence which it would otherwise have withheld. Such advantages at once destroy that equality between contesting parties which is a prime requisite of every judicial proceeding.

But matter bearing upon the question of property was, even in the view of the Government of Great Britain, relevant in the original Case, and any evidence or proofs which the Government of Great Britain desired to submit upon that point ought to have been embraced in their original Case. Manifestly, everything relating to the nature and habits of the seals is of this character. It is upon these that the question of property depends. All matter of this description, except such as plainly tends to impeach and was designed to impeach the evidence offered by the United States, should have been exhibited in the original Case, and should not be allowed to be introduced under cover of the Counter Case. Surely it cannot be the privilege of Her Majesty's Government to so introduce its proofs as to deprive the United States of all opportunity either to answer or impeach them.

And the same circumstance which deprives the United States of its just right of answering by counteracting proofs the new matter contained in this Counter Case also deprives them of the ability to fully treat of such matter in argument. Entirely occupied as they are, and must necessarily be, in the final work of translating and carrying through the press the argument already prepared by them upon the original Cases, they have no time at their disposal in the short period between the delivery of the Counter Case and the time appointed for the submission of the arguments within which to carefully review and comment upon this new matter.

Even the evidence in respect of the claim for damages made by Great Britain is chiefly comprehended in the Counter Case, so that the United States Government has no opportunity to introduce counter proof, nor even to analyze in written argument the evidence so submitted.

The United States Government therefore protests against the consideration by the Arbitrators of any evidence or proofs which in their judgment should, under the true interpretation of the treaty, have been embraced in the original Case of Her Majesty's Government.

The only qualification of the unusual advantage which Her Majesty's Government would gain from the permission to lay before the Arbitrators allegations and proofs which the United States have had no opportunity to answer, comes from the circumstance that most of the new matter referred to is of so little materiality or of such small probative force, that the privilege of answering is of less importance than it would otherwise be. There is a failure everywhere in this last document, as there was in the principal Case of Great Britain (including as part of it the separate report of the British Commissioners), either squarely to assert any proposition vital to the merits of the controversy, or to attempt directly to maintain it by evidence or argument.

There are, aside from the matters relating to sovereignty and jurisdiction, several material questions in this controversy, substantially stated in the Case of the United States.

First. Do the Alaskan fur-seals, under the necessary physical conditions of their life, habitually so return to the Pribilof Islands and so submit themselves there to the control of the proprietors of those places as to enable the latter to make them the subjects of an important economical husbandry in substantially the same way and with the same benefits as in the case of domestic animals?

Second. Has the Government of the United States, the occupant and proprietor of those islands, availed itself of this opportunity, and by wit, industry and self denial made these animals the subjects of such husbandry, and thereby furnished to commerce and the world the benefits of the product, at the same time preserving the stock ?

Third. Do not these facts, under the circumstances proved, give to the United States Government, upon the just principles applicable to the case, and in accordance with the general usage of nations in similar instances, such a right of property in the seal herd and the husbandry thus based upon it as entitles that Government to protect it from destruction, at the times and in the manner complained of ?

Fourth. Even if it were possible to conceive that this right of property, unquestioned so long as the seal herd remains within the territorial waters of the United States, is suspended as to each and any individual seal as soon and so long as it can be found outside the territorial line, however temporarily, and with whatever intention of returning, are individuals of another nation then entitled to destroy such animals for the sake of private gain, if it is made clearly to appear that such destruction is fatal or even largely injurious to the important material interest of the United States Government so established and maintained upon its territory, for the benefit of itself, its people, and mankind ? More especially if the manner of such destruction is in itself so barbarous and inhuman that it is prohibited in all places where civilized municipal law prevails ? Is such conduct a part of the just freedom of the sea ?

Fifth. Is any practicable husbandry possible in pelagic sealing, or is not that pursuit essentially and necessarily destructive to that interest, and certain, if engaged in to any considerable extent, to result in the loss, commercially speaking, of the animal to the world ?

Who will say that Her Majesty's Government, in its principal Case, or in its Counter Case, takes a square attitude upon either of these questions ? Who will say that it squarely negatives either of the two first or affirms the last of these questions, as matters of fact, or meets with any satisfactory answer, either upon principle or authority, the propositions of the other two ?

What, then, is the character of this Counter Case, so far as respects the matter referred to ? It seems to consist in great part of desultory observations, suggestions, and conjectures, probable or improbable, upon immaterial points ; or, where the points are material, the matter is vague and indefinite, and the proofs slight, often inconsistent, and everywhere unsatisfactory. Observations made in one place are qualified in another, contradicted in another, and perhaps reasserted in another. To follow such a line of discussion with minute criticism would be an endless task, and when it was concluded it would be found to be nearly useless. The best method of dealing with such a sort of contention will be to briefly state the *points* to which it seems to be directed, and to offer such observations upon these and the matters relating to them as seem most pertinent.

First. Considerable importance seems to be assigned to the point whether seals are more aquatic than terrestrial in their nature, and surprise is expressed that they should be viewed, in the case of the United States, as being very largely land animals.

But whether they are principally aquatic or terrestrial is of little importance. It is certain that they are amphibious, and that they live sometimes upon the land and sometimes in the sea. The only important question is whether they have those qualities, which, under the principles upon which the law of property rests, make them property, or render it expedient that an industry established by the United States in respect to them should be protected by a prohibition of slaughter upon the high seas.

Second. Much stress is also laid upon the question whether coition may be had in the water. Of what consequence is this? We know it is a fact that it is had principally, if not exclusively, on the land, to an extent which in its circumstances forms the most prominent distinctive and controlling feature in the habits and movements of the fur-seal. The births certainly take place upon the land, and it is there that the young are nourished and brought up.

Third. A good deal in the way of conjecture is stated and sought to be supported, to the effect that the seals may have had, in times of which we know nothing, other breeding places, of which we know nothing; and may again be driven to other haunts. It is not perceived that these conjectures are in any manner relevant. They are purely conjectures, and were they determined one way or another, it would not matter. What we are dealing with is an animal which has had uniform habits ever since anything has been known about it; and the only reasonable conjecture which we can make is, if it were of importance to make any, that it will continue to have, in the future, the same habits, as under the same circumstances it has had in the past.

Fourth. In the report of the British Commissioners, submitted with the original Case, it was in substance admitted that the Alaskan herd was entirely separate and distinct from the herd on the opposite side of the Pacific Ocean. A good deal of matter is set forth in the Counter Case tending to support the opposite notion, that the members of these different herds commingle.

It is enough to say in answer to all this, that the utmost which is asserted is *mere* conjecture, and as such should be dismissed as wholly unworthy of consideration. Surely this Tribunal will find other grounds than conjecture upon which to base its decision. And besides, the absence of any commingling between the herds worthy of consideration is fully proved by the evidence.

It is suggested in the Counter Case that the distinctive features which the Alaskan herd exhibits are probably those only which are due to a long residence under peculiar geographical conditions. Let this be conceded. How otherwise could they be denied? Upon the speculative question whether these different herds of seal are of different species or not, or whether they were once derived from a common stock, we are at liberty to amuse ourselves with such conjectures as may please us. It is of no importance how the Alaskan herd acquires its distinctive physical peculiarities, if they have actually been acquired so that they can be distinguished from others, and of this the testimony of the furriers, to go no further, is conclusive.

But what if it were *proved* even that the herds did commingle? It is not perceived that this would be of any material consequence. Would it be for this reason any the less a crime against the law of nature to destroy them? Would it be any the less important that the seals should be regarded generally as property or any the less important that such regulations should be adopted as would prevent their extermination?

Fifth. It is again insisted, as it was in the report of the British Commissioners, that it is not proved that the females go long distances from the breeding places into the sea to seek for food while they are nourishing their young. But in the face of the evidence that the females actually do go into the water universally, that they are destroyed there in large numbers, and that they have in numerous instances been found and killed by pelagic sealers at long distances from the shore with their breasts filled with milk, how can it be suggested, with any expectation of belief, that the fact is not proved? For what purpose *do* the females resort to the water? What is the object of their distant excursions into Bering Sea, where they have been known to be? Is it not reasonable to suppose that nursing mothers require nourishment? And how else are the young supported?

But here, again, suppose it were true that these excursions were not made for the purpose of food. They are yet *made*, and the danger of their being slaughtered by pelagic sealers is as great as if the object of their excursions were food.

Sixth. Much space is devoted in this Counter Case to the subject of the frequent finding of numerous dead pups; and here also conjecture is abundantly resorted to. It is suggested that they may have been killed by disease, or by the rush of other seals over them, or by the waves of the sea, or by their mothers having been killed by being driven to the hauling grounds and thus injured and prevented from finding their way back to their young. But to what purpose is it to suggest that a great variety of things may have happened, of no one of which any proof is given? Doubtless it is true that some of the young die from a variety of causes of which we know nothing, as is the case with all animals. The question is, whether the slaughter of their mothers by pelagic sealing is not a cause, and the principal cause of this mortality. When we know that the mothers do habitually resort to the sea, where they are killed in great numbers, when we know that they have often been killed at long distances from the shore with their breasts distended with milk, when we know that suckling is the natural and only mode of nourishment to the young, and when we know that a number of the pups dead upon the islands are extremely emaciated, and exhibit all the appearances of having died in consequence of the loss of nourishment, the conclusion seems plain enough that their mothers have been killed at sea and they starved in consequence, and no amount of conjecture can displace it.

Seventh. It is said by way of argument against the allegation of a property interest that the seals, although they return to the same general breeding place, do not always return to the same *island*, or to the *same place* upon the same island. This may or may not be true; but of what importance is it, when it appears that all the islands ever have been, now are, and are likely to continue to be the property of one proprietor, the United States Government? And if it were otherwise, if there were many different proprietors of the different islands and of different places on the same islands, of what consequence would it be upon the general questions of property interest or what regulations were necessary in order to preserve the herd?

All the points above enumerated, made by the British Counter Case, are, it is conceived, essentially immaterial. They might be decided the one way or the other without touching the merits of the real question of the controversy. In saying this, however, we by no means intend to intimate that anything is contained in this Counter Case, by way of evidence, which in any way modifies or weakens the proofs which the United States have in their principal Case adduced to support the positions taken by them.

There are, however, some points which the Counter Case deals with which are of greater importance; but in respect to these, although the points themselves are material, the new evidence which is brought forward or the new views which are suggested are not perceived to be material. Some brief observations should be bestowed upon them.

First. Pelagic sealing is again defended, but how is it defended? Is it denied that it is in its nature destructive as involving the killing of females to a much greater extent than males? Is it denied that the greater part of these females are either pregnant or nursing, and sometimes both? Is it denied that a great many victims are killed and wounded which are never recovered? Is it denied that many young perish on account of the death of the mothers? There is no denial upon either of these points. What then is asserted or suggested in the Counter Case? Simply that the statements upon this subject are exaggerated.

It would enable counsel for the United States to better answer any position taken on the part of the Government of Great Britain upon these points if the counsel for the latter would commit themselves to some definite proposition or assertion, but this is carefully avoided by them. They say, indeed, that the statements upon this head are exaggerated; but *whose* statements are exaggerated? And *how much* are they exaggerated? The evidence given in the Case of the United States in great abundance shows that from 75 to 90 per cent. of the entire pelagic catch is composed of females. If it be this which it is insisted on the part of Great Britain is an exaggerated statement, then how much is it exaggerated? Is it exaggerated 5, or 10, or 20, or 40, or 50 per cent.? What, according to the best information obtainable by the counsel for Great Britain, is the most reasonable statement of the proportion of females in the pelagic catch? They give us no information upon these points. They offer no estimate; and if we recur to the proofs contained in the depositions which are given, we are still worse off. These vary from 5 to 80 per cent. Most of them, those that place the amount at less than half, every one can see must be false. For what purposes are such proofs presented? Is it expected that they will be believed to be true? It will perhaps be suggested that the truth may be found by taking an average of these inconsistent statements. Such a course has been pursued on the part of the Government of Great Britain upon the point of how many seals are killed or wounded that are never recovered; but the method of endeavoring to obtain the truth by taking an average of lies seems to be open to question.

Upon this whole matter the counsel for the United States will content themselves by offering the following summary of considerations:

I. The assertion in the Case of the United States is, that the proportion of females in the pelagic catch is at least 75 per cent. The reasonableness of this is supported in multiform ways.

(1) It is nowhere *denied* in the report of the Commissioners on the part of Great Britain, nor even in the British Counter Case.

(2) Upon any fair construction of the answer of one party to the allegation of another, it must be taken as *admitted.* The admission is reluctantly made in the British Commissioners' Report and in the British Counter Case also that a "considerable proportion" of the pelagic catch consists of females. What does a "considerable proportion" mean? Five per cent., or 10 per cent., or 20, or 50, or 75, or 80? The language is sufficiently broad and indefinite to cover either of the proportions named, and, as the assertion made on the part of the United States is not denied, the admission in question must be taken to be an admission of the facts *substantially* as asserted on the part of the United States.

(3) The proofs adduced by the United States from persons engaged in pelagic sealing or with definite knowledge of it, overwhelmingly support the assertion.

(4) The proofs contained in the British Counter Case also support it. They are the statements of the pelagic sealers themselves, a class of witnesses in the highest degree interested and not very much to be depended upon. They must be taken most strongly against the parties making them. And excluding those that are manifestly false, we find enough remaining to fully support the con-

tention of the United States. Among these witnesses there are a large number who place the proportion of females in the catches made by them, respectively, higher than 60 per cent.

(5) But the proof furnished by the furriers is absolutely decisive, and this makes the proportion fully equal to the assertion by the United States.

(6) If we look at the probabilities of the case, no assertion in opposition to the contention of the United States can be entertained for a moment. When we consider that the female at sea is as a general rule, more easily approached, and therefore more easily secured, than the male, and that the number of breeding females is, as compared with the breeding males probably twenty to one, how is it possible that the slaughter of the females should not embrace anywhere from three-fourths to four-fifths of the entire catch? If indeed, we could credit the assertion continually put forward in the report of the British Commissioners and in the British Counter Case, that there has been for years on the Pribilof Islands an excessive slaughter of young males, and that thus the number of breeding males has been very much reduced, so as to make the harems three and four times as large as they formerly were, the excess of females over males would be vastly multiplied, and the wonder would almost be how any breeding male should ever be killed.

II. Considerable attention is given to an attempt to controvert the position of the United States, that a large number of seals struck by pelagic sealers are lost without being recovered. Of course the United States have had no opportunity to controvert the proofs presented upon this point in the British Counter Case. They contain no evidence except that of pelagic sealers, and this must be taken most strongly against them. Upon this point the reasonable and probable inferences from incontestible facts are of greater weight than the loose and suspicious statements of the witnesses referred to. We know that when a seal is killed he sinks at once, because his specific gravity is greater than that of the water, although he may sink more quickly in some instances than others. We also know that when a seal is wounded, but not killed, he has great capacity to escape the pursuer. We know that skill in shooting and skill in recovery must vary very much among different men. Under these circumstances, it is not reasonable to believe that half the seals fatally wounded are secured.

III. Further attention is given to alleged mismanagement of the seal herd upon the Pribilof Islands. Little or nothing new in the way of evidence is offered upon the subject, but the assertions contained in the British Commissioners' report are repeated and enlarged. The points on which particulars of this alleged mismanagement are stated are: (1) the excessive killing of young males; (2) injuries committed by what is called "overdriving"; (3) raids upon the islands.

(1) Concerning the excessive slaughter of the young males, there is no trustworthy evidence than an annual draft of 100,000 was, before any injury effected by pelagic sealing, excessive. It is undoubtedly true that such a draft upon the islands, coupled with any considerable amount of captures at sea, would be excessive, and consequently we find that after pelagic sealing had reached considerable proportions it became increasingly difficult to make the annual draft of the 100,000 upon the islands, which difficulty increased to such an extent that in 1890 it was arrested by the action of the agent of the United States Government. If at that time, or prior to that time, the extent of pelagic sealing had been known and its effects upon the herd ascertainable, action would have sooner taken place to restrict the killing upon the islands. In this suggestion the damages occasioned by pelagic sealing are insisted on as its defense.

(2) In respect to over-driving, no proofs are submitted which furnish any considerable support to the assertion. It is undoubtedly true that from the very nature of the case there may be more or less seals included in the drives unfit, by reason of being females or otherwise, for slaughter. These are allowed to drop out to regain the herd. The business of driving may be, if negligently conducted, trying and injurious to the subjects of it, but it is not necessarily so in any considerable degree. There is no proof worthy of attention that it is so negligent. The interest of those engaged in it is largely the other way. And the evidence that it is well conducted is ample.

(3) Upon the Islands it is to be said that undoubtedly there have been in the past, and may be in the future, attempts, sometimes successful on the part of marauders, to take seals by night. But of what consequence is this to the argument? Does it show anything more than that there ought to be kept an adequate guard? And certainly we know that it is in the interest of the proprietors

to keep one. What self-interest will not move men to do, they will not do from any other motive. But whence do these raids come? From the very sealing vessels engaged in pelagic sealing. That is one of the mischiefs of that pursuit.

(4) Touching the allegations of mismangement upon the islands, embracing the three forms of possible injury to the seals which have been mentioned, there is this to be said: they may possibly occur in consequence of carelessness or neglect; but every motive and every interest stimulates the United States as well as their lessees, to make the evils as small as possible.

And concerning the extent to which these evils exist, the conclusion must be formed upon the statements of actual witnesses, and not upon lectures or articles in newspapers based by the writers we do not know upon what evidence or whether upon any evidence at all.

(5) But what is the point supposed to be established or supported by this matter concerning mismanagement upon the islands? What is the object for which it was introduced? What conclusion would it justify if the assertions were proved to their fullest extent? Do they show that pelagic sealing is any less mischievous? Do they show that in that form of sealing males are taken and not females? Do they show that in that form of sealing a great many are not wounded and crippled that are never recovered? Do they show that in administering a herd of such animals on the land females should be slaughtered and not males? Do they show, or are they intended to show, that the United States has not adopted methods grounded upon the right principles? Do they show or are they intended to show that a different set of proprietors than the United States would attend to the business in a better and more economical manner and with better methods? If so, what sort of proprietors should they be? What scheme of administration should be followed? How should the selections for slaughter be made? Answers to these questions would be extremely pertinent, but none seem to have been suggested.

(6) The report of the British Commissioners more than intimated, although quite inconsistently with admissions made by them, that the capture of seals upon the land was an error, and that the ideal mode of dealing with this animal was to confine the pursuit to the sea. The Counter Case on the part of Great Britain does not avow

this proposition. Is it the intention on the part of the Government of Great Britain to support that view? If so, some intimation to that effect would have been extremely pertinent in this Counter Case.

And when that view comes to be supported, if at all, it is to be hoped that those who advocate it will take into consideration and give satisfactory explanations upon the following points:

(*a*) What man of science, familiar with the races of animals and the causes which tend to their destruction or their preservation, entertains a like view? What man acquainted with the business of practical husbandry and dealing for profit with a race of animals polygamous in its nature, thinks it wise to slaughter males and females indiscriminately for the market, or rather, to make their selections for slaughter consist in the proportion of 75 per cent. of females.

(*b*) Is it likely that any better provision for the preservation of the race of fur seals can be suggested than that which assigns the rewards of preservation to those who alone have the ability and the disposition to exercise the best methods of preservation? Is the method which has preserved in undiminished numbers for one hundred years and upwards the herd of seals resorting to the Commander Islands, a mistake, and is the same method which has been pursued for nearly the same period on the Pribilof Islands, and with the same effect until the ravages made by pelagic sealing were committed, also a mistake? And wherein is there any essential difference between the methods pursued on the two groups of islands?

And, finally, were it even admitted that the United States Government mismanages its own business to the detriment of its own interests, would that destroy its right of property in the business? Or deprive it of the right of self-defense? Or justify a slaughter by the poachers which would otherwise be unjustifiable? Or even render it probable that such mismanagement would not be corrected by experience?

It is worthy of remark, in conclusion, upon the subject of regulations, so largely dealt with in the British Counter Case—

1. That while it is now professed on the part of Great Britain that Her Majesty's Government is willing that just regulations for the preservation of the fur-seal should be adopted, it is solely owing to the refusal

of that government to consent to any such regulations, on account of the objections of Canada, that this controversy has arisen and this arbitration has been rendered necessary. The attitude of Canada on this subject plainly shows that it quite well understands that any regulations adopted for the preservation of the seal which would be at all adequate for that purpose most substantially, if not entirely, put an end to pelagic sealing. The object of the adventurers, which that Province thinks it right to protect, is simply to make what profit is to be derived out of the destruction of the fur-seals in the few years required for its completion.

2. In the British Counter Case, every objection possible to be brought forward to the making or enforcing of any regulations, is insisted on. The real position assumed is that of opposition to any regulations that would be of sufficient value to be worth adopting. Those proposed by the British Commissioners are for the benefit of pelagic sealing and an enhancement of its profits, and its consequent destruction by restricting the unquestioned right of the United States to take the seals on its own territory. In answer to the proved charge that pelagic sealing conduces to the inevitable extermination which it has produced everywhere else, and that the methods employed by the United States Government tend to the preservation of the animal while making its product available to the world, it is gravely proposed by the British Commissioners to adopt regulations which would diminish that use which is consistent with the protection of the seal, and which is not called in question by the treaty, so as to increase the use which is destructive; and to add to the losses already suffered by the United States in its territorial interest, by increasing the profits of those who are engaged in destroying it. It is difficult to deal seriously with such proposals.

E. J. Phelps.
James C. Carter.
H. W. Blodgett.
F. R. Coudert.

UNITED STATES. No. 11 (1893).

# BEHRING SEA ARBITRATION.

# PAPERS

RELATING TO THE

## PROCEEDINGS OF THE TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER

ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON
ON THE 29TH FEBRUARY, 1892, BETWEEN HER BRITANNIC MAJESTY
AND THE UNITED STATES OF AMERICA.

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*Presented to both Houses of Parliament by Command of Her Majesty.*
*September* 1893.

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# BEHRING SEA ARBITRATION.

## Papers relating to the Proceedings of the Tribunal of Arbitration constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

### No. 1.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, February* 17, 1893.

THE first meeting of the Tribunal in the Behring Sea Arbitration having been fixed for the 23rd instant, I have to request you to proceed to Paris to attend it.

Her Majesty's Attorney-General, Sir Richard Webster, Q.C., and Mr. C. Robinson, Q.C., of Canada, will also attend the meeting as Counsel on behalf of Her Majesty's Government, and will be ready to give you their advice and support.

It will probably be convenient that you should be in Paris two or three days previous to that date in order to enter into informal communications with the United States' Agent, or with the gentleman whom he may have delegated to represent him, for the purpose of arranging the course of procedure to be adopted before the Tribunal.

You are aware, from the correspondence which has already been forwarded to you, that it has been agreed by the Governments of Her Britannic Majesty and the United States that the first meeting of the Tribunal shall be attended by one Arbitrator on the part of Great Britain, one on the part of the United States, and one of the three Arbitrators selected by the foreign Governments.

At this first meeting the Agent of the United States will apply for an adjournment of the Tribunal to the 23rd March, to which date the presentation of the printed Argument would thereby be postponed, and you are authorized to concur in the application.

It has further been agreed that all matters other than that of this adjournment, and such action as may be deemed by the Arbitrators present as necessary for the organization of the Tribunal, shall be postponed to the full meeting on the 23rd March.

Amongst the subjects which may be classed in the category of those to be discussed at the first meeting are the following:—

1. The question whether the proceedings before the Tribunal shall be kept secret until its close, and whether such secrecy shall apply to the Case, Counter-Case, and Argument presented on either side.

The matter seems to Her Majesty's Government to be one for the decision of the Arbitrators. It would probably be found convenient for them that the discussions should be considered as confidential while they are proceeding. There does not appear to be the same objection to the publication of the Cases, Counter-Cases, and Arguments, nor of the Reports of the Behring Sea Commissioners, respecting which latter the Treaty only stipulates that they shall not be made public until they shall have been submitted to the Arbitrators. But in respect to these documents also, Her Majesty's Government are willing to follow the course which may appear most convenient to the Arbitrators.

2. The question of the appointment of a Secretary or of Joint-Secretaries to the Tribunal.

As the French Government will provide the place of meeting, and as the French Arbitrator has consented to attend the first sitting, he will no doubt be designated by the Arbitrators as President of the Tribunal, and he will probably have proposals to make as to the choice of a Secretary or Secretaries, and as to the arrangements for clerical assistance and the printing of the Protocols.

As soon as the business connected with the first meeting is completed you will be at liberty to return to London, in order to proceed with the preparation of the printed Argument.

I have to request you to furnish me with Reports of each meeting of the Tribunal, both on the first occasion and subsequently when the full meetings take place, in a numbered series of despatches according to the forms in use in this Office.

You will refer to me, by telegraph, for instructions on any doubtful points which may call for immediate decision.

I am, &c.
(Signed) ROSEBERY.

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## No. 2.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, February* 17, 1893.

WITH reference to my preceding despatch of this day's date, I have to inform you that I have appointed Mr. R. P. Maxwell of this Office, and Mr. Ashley Froude, C.M.G., late Secretary of the Behring Sea Commission, to assist you in your work as British Agent in the Behring Sea Arbitration.

These gentlemen will accompany you to Paris for the first meeting of the Tribunal on the 23rd instant, and for the subsequent meetings which will commence on the 23rd proximo.

I am, &c.
(Signed) ROSEBERY.

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## No. 3.

*Mr. Tupper to the Earl of Rosebery.—(Received February* 22.)

(Telegraphic.) *Paris, February* 22, 1893.

BEHRING SEA Arbitration.

The meeting of the Tribunal is fixed for 11 o'clock on Thursday morning.

Baron de Courcel has suggested to the United States' Acting Agent and myself that the adjournment shall extend to the 6th April instead of to the 23rd March, and that on 30th March the printed arguments shall be handed in to the Arbitrators.

The proposed adjournment would defer the second meeting till after Holy Week, and would enable the Tribunal to consider the argument without further adjournment, which would be necessary for that purpose were 23rd March to be date of the second meeting.

The United States' Acting Agent is telegraphing to his Government for instructions.

Sir Richard Webster and Mr. Robinson approve, subject to the views of Her Majesty's Attorney-General, who has not yet arrived here.

Does the proposal meet with your Lordship's approval?

## No. 4.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.) *Foreign Office, February* 22, 1893.

THE course proposed by Baron de Courcel seems to be convenient. I approve the arrangement as stated in your telegram of to-day.

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## No. 5.

*Mr. Tupper to the Earl of Rosebery.—(Received February* 23.)

My Lord, *Paris, February* 21, 1893.

I HAVE the honour to acknowledge the receipt of your Lordship's despatches of the 17th instant, containing instructions for my guidance at the first meeting of the Behring Sea Arbitration Tribunal, and informing me that Mr. R. P. Maxwell and Mr. Ashley Froude would accompany me to Paris.

I have the honour to inform your Lordship that, in accordance with your instructions, I left London yesterday, and arrived here the same evening, accompanied by the above-mentioned gentlemen and my Private Secretary, Mr. J. Pope.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 6.

*Mr. Tupper to the Earl of Rosebery.—(Received February* 23.)

My Lord, *Paris, February* 21, 1893.

I HAVE the honour to inform your Lordship that I called this morning at Her Majesty's Embassy, accompanied by Mr. Maxwell, Mr. Froude, and my Secretary, Mr. Pope, and saw Mr. Austin Lee, from whom I obtained much useful information in connection with the meeting of the Tribunal of Arbitration.

Finding that Mr. William Williams, the Junior Counsel for the United States, was staying at the Hôtel Continental, I called upon him, and learned that he had been delegated to represent Mr. Foster, the Agent of the United States, pending the latter gentleman's arrival in Paris.

We then by arrangement made several official visits together, and endeavoured to see Baron de Courcel, in order to make an appointment for the meeting of the Tribunal on Thursday.

Having failed to find his Excellency at home, we have made an appointment to call on him together to-morrow morning, at 10 o'clock.

Lord Hannen and Mr. Justice Harlan have expressed their willingness to meet at any hour which may be agreeable to Baron de Courcel.

I am of opinion, if your Lordship should see no objection, that the agreement as to the secrecy of the Cases and Counter-Cases should not be prolonged beyond the 23rd instant; but that in regard to this question, as well as to that of opening the proceedings of the Tribunal to the public, it would be advisable to defer to whatever opinion the Arbitrators may express on the subject.

Mr. Williams has intimated to me that his Government desired the publication of the Cases and Counter-Cases, and he considered that the agreement as to secrecy would terminate on the 23rd instant.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 7.

*The Marquis of Dufferin to the Earl of Rosebery.—(Received February 23.)*

My Lord, *Paris, February* 22, 1893.

I HAVE the honour to transmit herewith copy of a letter which I have received from the Minister of the United States in Paris, informing me that Mr. William Williams, Associate Counsel of the United States before the Tribunal of Arbitration convened to decide the questions of fur-seals, has been designated to act as Special Agent of the United States at the meeting of the Tribunal to be held on the 23rd instant.

I have, &c.
(Signed) DUFFERIN AND AVA.

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### Inclosure in No. 7.

*Mr. Coolidge to the Marquis of Dufferin.*

My Lord, *Paris, February* 21, 1893.

I HAVE the honour to inform your Excellency that Mr. William Williams, Associate Counsel of the United States before the Tribunal of Arbitration convened to decide the question of fur-seals, has been designated to act as Special Agent of the United States at the meeting of the Tribunal on the 23rd instant.

I have, &c.
(Signed) J. JEFFERSON COOLIDGE.

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## No. 8.

*Mr. Tupper to the Earl of Rosebery.—(Received February 23.)*

(Telegraphic.) *Paris, February* 23, 1893, 6 P.M.

THE Tribunal has decided to adjourn until the 23rd March, the further adjournment referred to in my telegram of yesterday not having been agreed to by the Government of the United States.

With regard to the publication of the Cases and Counter-Cases, the Tribunal decided that the matter did not come under their consideration; and I understand that it is the intention of the United States' Government to publish these documents.

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## No. 9.

*The Marquis of Dufferin to the Earl of Rosebery.—(Received February 25.)*

My Lord, *Paris, February* 24, 1893.

THE Behring Sea Arbitration Tribunal held its first meeting yesterday at the Ministry of Foreign Affairs. It was attended by Baron de Courcel, the French Arbitrator (who was requested by his colleagues to act as President for the occasion), by Lord Hannen, the British Arbitrator, and Mr. Justice Harlan, the United States' Arbitrator, as well as by the Honourable C. H. Tupper, the British Agent, and Mr. W. Williams, acting as Agent for the United States in the place of Mr. Foster, who has not yet arrived.

No Counsel were present on behalf of the United States, but Sir Charles Russell and Sir Richard Webster attended as Counsel on behalf of Great Britain.

On the proposal of the United States' Acting Agent, supported by the British Agent, the Tribunal adjourned till the 23rd March, and it was agreed that, pending a decision to be taken by the full Tribunal, the proceedings should be kept secret.

I took the opportunity of a ball at the Élysée in the evening to present Lord Hannen and Mr. Tupper to the President of the Republic.

I have, &c.
(Signed) DUFFERIN AND AVA.

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## No. 10.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord, *Paris, February* 23, 1893.

AFTER a conversation yesterday with Baron de Courcel and Mr. Williams, the Acting Agent for the United States, I had the honour to inform your Lordship by telegraph that a suggestion had been made by the former to the effect that the Tribunal of Arbitration should be adjourned till the 6th April, and the presentation of the printed arguments postponed till the 30th March.

I duly received your Lordship's telegram of yesterday, informing me that you approved of this proposal.

Mr. Williams, however, stated to me this morning that his Government had instructed him to object to the proposed postponement beyond the 23rd March, though, he added, it was probable that after the meeting on that date an adjournment might be desirable for a few days.

No allusion was therefore made to the question of an extended adjournment at the meeting of the Tribunal to-day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 11.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord, *Paris, February* 24, 1893.

I HAVE the honour to transmit herewith to your Lordship a copy of the Protocol of the first meeting of the Behring Sea Tribunal of Arbitration, which was held at 11 o'clock yesterday morning at the French Ministry of Foreign Affairs.

This Protocol, which is drawn up in the French language, was finally approved and signed by the three Arbitrators at an informal meeting held this morning, and attended by the Agents of the two Governments in accordance with the request of the Tribunal.

An English version of the Protocol has been prepared, and will be signed to-morrow by Mr. Williams and myself.

I have, &c.
(Signed) CHARLES H. TUPPER.

## Inclosure in No. 11.

*Protocoles des Seances du Tribunal d'Arbitrage, constitué en vertu de la Convention du 29 Fevrier,* 1892, *signée à Washington entre le Gouvernement des États-Unis et de Sa Majesté Britannique.*

### *Protocole I.—Séance du* 23 *Février*, 1893.

LE Tribunal s'est réuni à Paris dans l'Hôtel du Ministère des Affaires Étrangères de France.

Les Arbitres présents étaient :—

L'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis, un des Arbitres désignés par les États-Unis ;

Son Excellence le Baron Alphonse de Courcel, Sénateur, Arbitre désigné par la France;

Le Très Honorable Lord Hannen, Pair d'Angleterre, siégant à la Cour Suprême d'Appel, un des Arbitres désignés par la Grande-Bretagne ;

Lesquels se sont assurés que leurs pouvoirs respectifs étaient en bonne et valable forme.

M. le Baron de Courcel est invité par ses collègues à prendre place au fauteuil de la Présidence pour la présente séance.

Assistent à la séance :—

M. William Williams, en qualité d'Agent Spécial et Conseil Adjoint pour les États-Unis, et

L'Honorable Charles H. Tupper, en qualité d'Agent de Sa Majesté Britannique.

MM. Williams et Tupper ont déposé sur le bureau du Tribunal Arbitral les Commissions qui les accréditent devant le Tribunal.

Assistent également à la séance, en qualité de Conseils du Gouvernement Britannique :—

Sir Charles Russell, Conseil de la Reine, Membre du Parlement, Attorney-Général de Sa Majesté Britannique ;

Sir Richard Webster, Conseil de la Reine, Membre du Parlement ;

M. Christopher Robinson, Conseil de la Reine.

Le Président a invité M. Henry Feer, ancien Consul-Général de France, à rédiger le Protocole de la séance, avec le concours de MM. Williams et Tupper.

M. Williams, agissant au nom du Gouvernement des États-Unis, demande que le Tribunal s'ajourne au 23 Mars.

M. Tupper, au nom du Gouvernement Britannique, appuie la demande de M. Williams.

Sir Charles Russell, Principal Conseil de la Grande-Bretagne, déclare que les Conseils, quoique informés d'avance de la demande qui devait être présentée, ont tenu, par déférence pour le Tribunal Arbitral, à se présenter à cette première séance.

Le Tribunal Arbitral, faisant droit à la demande, qui lui est adressée au nom des deux parties, décide de s'ajourner au 23 Mars.

La question de la publication des Mémoires et Contre-Mémoires ayant été posée, les Arbitres déclarent qu'elle n'est pas de leur compétence.

Quant à la publication du Protocole de la présente séance, les Arbitres présents ne se trouvant pas en nombre suffisant pour prendre une décision de nature à lier pour l'avenir le Tribunal Arbitral, déclarent que jusqu'à nouvel ordre le Protocole de la séance du 23 Février demeurera secret.

Le Tribunal Arbitral s'ajourne au 23 Mars.

Ainsi fait à Paris, le 23 Fervrier, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent Spécial des États-Unis .. | WILLIAM WILLIAMS. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire.. .. .. .. | H. FEER. |

[For translation, see Inclosure in No. 13.]

## No. 12.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord, *Paris, February* 24, 1893.

TO supplement the report of the proceedings of yesterday's meeting of the Tribunal, contained in the Protocol which is inclosed in my immediately preceding despatch, I have the honour to furnish your Lordship with the following account of what took place.

Baron de Courcel, having taken the Chair as President, stated that the object of the Tribunal was to consider the propriety of commencing the proceedings if neither of the Agents had any objection.

If there were any objection or any proposal to make, such as the question of an adjournment, it should come from the Agents of the parties, and now was the time it should be made.

Mr. Williams thereupon made his proposal for an adjournment till the 23rd March, to which I assented, and to which the Tribunal agreed.

Sir Charles Russell then addressed the Tribunal as recorded in the Protocol.

The President next requested the Agents to inform their respective Governments, and to cause the four Arbitrators who were not present to be advised, of the decision of the Tribunal in regard to the adjournment. He added that the Arbitrators present did not feel able, in the absence of their colleagues, to arrange for the appointment of a Secretary or Secretaries, but that for the purposes of the present meeting the Protocol would be prepared by M. Feer, formerly in the French Consular Service, with the assistance of the Agents of both parties.

The Protocols, he said, would be drawn up in French and English, French being the language of the country in which the Tribunal was assembled, and English that of the two nations who were interested in the Arbitration.

Mr. Williams then stated that the documents in the Case had up to the present been kept secret, in accordance with an Agreement between the two Governments, but that as neither party saw any reason for further extending the injunction of secrecy, he proposed that the Cases and Counter-Cases should become public property forthwith unless the Arbitrators saw any objection.

The President inquired whether I agreed to this proposal, and I replied in the affirmative.

The President, after consultation with his colleagues, then announced that the publicity of the Cases, Counter-Cases, and Arguments was not a question on which the Tribunal had to enter. The Agents on either side should act in regard to it in whatever way they might judge to be the best.

As to the proceedings before the Tribunal, he stated that they belonged to the Tribunal itself, and that the Arbitrators present had no right to give them to the public. They must be kept secret until the next meeting, when the full Tribunal would decide as to the proper course to be pursued.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 13.

*Mr. Tupper to the Earl of Rosebery.—(Received February 27.)*

My Lord, *Paris, February* 25, 1893.

WITH reference to my first despatch of yesterday, I have the honour to transmit to your Lordship a copy of the English version of the Protocol of the first meeting of the Behring Sea Arbitration Tribunal.

This document has been certified as an accurate translation of the French original by Mr. Williams and myself, in accordance with the request of the Arbitrators.

The original documents, as signed in both languages, remain for the present in the custody of Baron de Courcel's Secretary.

I have, &c.
(Signed) CHARLES H. TUPPER.

## Inclosure in No. 13.

*Protocols of the Meetings of the Tribunal of Arbitration constituted under the Convention of February* 29, 1892, *signed at Washington between the Governments of the United States and Her Britannic Majesty.*

### *Protocol I.—Meeting of February* 23, 1893.

THE Tribunal assembled at Paris at the French Ministry for Foreign Affairs.

The Arbitrators present were:—

The Honourable John M. Harlan, Justice of the Supreme Court of the United States, one of the Arbitrators named by the United States;

His Excellency Baron Alphonse de Courcel, Senator, the Arbitrator named by France;

The Right Honourable Lord Hannen, Lord of Appeal, one of the Arbitrators named by Great Britain;

Who, having assured themselves that their respective powers were in good and valid form,

Baron de Courcel was invited by his colleagues to take the chair as President for the present meeting.

There were present at the meeting:—

Mr. William Williams, as Special Agent and Associate Counsel of the United States;

The Honourable Charles H. Tupper, as Agent of Her Britannic Majesty.

Messrs. Williams and Tupper laid before the Tribunal of Arbitration the Commissions empowering them to act before the Tribunal.

There were also present at the meeting, as Counsel for Her Britannic Majesty's Government:—

Sir Charles Russell, Q.C., M.P., Her Britannic Majesty's Attorney-General;

Sir Richard Webster, Q.C., M.P., and

Mr. Christopher Robinson, Q.C.

The President invited M. Henri Feer, formerly a Consul-General of France, to draw up the Protocol of this meeting, with the assistance of Messrs. Williams and Tupper.

Mr. Williams, acting for the Government of the United States, asked that the Tribunal adjourn till the 23rd March.

Mr. Tupper, in the name of the British Government, supported the request of Mr. Williams.

Sir Charles Russell, the leading Counsel for Great Britain, stated that the Counsel, though previously aware of the request which would be made, thought it right to attend the first meeting out of respect for the Tribunal of Arbitration.

The Tribunal of Arbitration acceded to the request made in the name of the two parties, and agreed to adjourn to the 23rd March.

The question of the publication of the Cases and Counter-Cases having been mentioned, the Arbitrators stated that it was not a subject for their consideration.

In regard to the publication of the Protocol of this meeting, the Arbitrators present, finding themselves in insufficient number to give a decision which would bind the Tribunal of Arbitration for the future, announced that the Protocol of the meeting of the 23rd February should be kept secret until further orders.

The Tribunal of Arbitration adjourned till the 23rd March.

So done in Paris, the 23rd February, 1893, and have signed:

| | |
|---|---|
| The President .. .. .. .. | ALPH. DE COURCEL. |
| The Special Agent for the United States.. | WILLIAM WILLIAMS. |
| The Agent for Great Britain .. .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. .. | H. FEER. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

## No. 14.

*Mr. Tupper to the Earl of Rosebery.—(Received February* 27.)

My Lord, *Paris, February* 25, 1893.

I HAVE the honour to inform your Lordship that, the business connected with the first meeting of the Behring Sea Tribunal of Arbitration having been completed this afternoon, I purpose leaving Paris to-morrow on my return to London, accompanied by the gentlemen attached to the staff of the Agency.

I have, &c.
(Signed) CHARLES H. TUPPER

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## No. 15.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, March* 1, 1893.

I HAVE received your despatch of the 24th ultimo, giving an account of what took place at the first meeting in Paris of the Behring Sea Arbitration Tribunal.

Your proceedings on that occasion are approved by Her Majesty's Government.

I am, &c.
(Signed) ROSEBERY.

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## No. 16.

*Mr. Tupper to the Earl of Rosebery.—(Received March* 3.)

My Lord, *Foreign Office, March* 3, 1893.

DURING my recent visit to Paris occasion was taken to arrange for the accommodation of the British Staff required for the presentation of the Case before the Tribunal of Arbitration.

In addition to the four gentlemen engaged as Counsel, viz., the Attorney-General, Sir R. Webster, Mr. C. Robinson, and Mr. Box, I respectfully suggest that the following should be attached to the Staff of the Agency:—Dr. G. M. Dawson, Mr. R. P. Maxwell, and Mr. G. F. Fairholme, of the Foreign Office; Mr. J. Anderson, of the Colonial Office; Mr. Ashley Froude; Mr. J. Pope, my Private Secretary; Mr. J. M. Macoun, Secretary to Dr. Dawson; and Mr. Charles Russell, the solicitor engaged in the case.

I have ventured to include the name of Dr. Dawson, as he is an officer in the service of the Canadian Government, and perhaps the only officer at the disposal of Her Majesty's Government who can be said to be conversant with the life and habits of the fur-seal. His presence at Paris I believe to be necessary, and I do not contemplate objection being taken on the part of the United States to our availing ourselves of his knowledge.

I do not propose, unless otherwise instructed by your Lordship, or unless occasion should arise after consultation with Counsel, to ask Sir G. Baden-Powell to attend.

In my opinion, his presence with Dr. Dawson might make it appear that the British Commissioners, who were appointed to make an impartial examination into seal life, were actively engaged in pressing the British Case before the Tribunal.

This I do not think desirable.

I learn that neither of the United States' Commissioners will be in Paris, though other officers of the United States familiar with seal life will be there.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 17.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, March* 8, 1893.

IN reply to your despatch of the 3rd instant, I have to inform you that I approve your recommendation that, in addition to the four gentlemen employed as Counsel, the following gentlemen should be attached to the Staff of the Agency for the presentation of the British Case before the Behring Sea Tribunal of Arbitration, viz., Dr. G. M. Dawson, Mr. R. P. Maxwell, Mr. Ashley Froude, Mr. J. Pope, Mr J. M. Macoun, and Mr. Charles Russell.

With regard to your suggestion that Mr. G. F. Fairholme, of this Office, should also be included as a member of the Staff, I shall be happy to comply with it should you find, after your arrival in Paris, that his presence would be desirable for the purpose of examining any further Russian documents that may be produced on the part of the United States.

It has also been arranged, after consultation with the Colonial Office, that Mr. J. Anderson, of that Department, shall be detached for such time as you may consider that he can be usefully employed.

In conclusion, I concur with you in the opinion that, for the reasons stated by you, it will be unnecessary that Sir G. Baden-Powell should be asked to attend in Paris, unless circumstances should make his presence expedient hereafter.

I am, &c.
(Signed) ROSEBERY.

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## No. 18.

*Mr. Tupper to the Earl of Rosebery.—(Received March* 21.)

My Lord, *Paris, March* 19, 1893.

I HAVE the honour to report that I left London on the 17th instant, and arrived here on that day, accompanied by Mr. M. Box, Mr. R. P. Maxwell, and my Private Secretary, Mr. J. Pope.

Her Majesty's Attorney-General, Sir R. Webster, Mr. C. Robinson, Dr. G. M. Dawson, Mr. A. Froude, Mr. C. Russell, and Mr. J. M. Macoun arrived in Paris last night.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 19.

*Mr. Tupper to the Earl of Rosebery.—(Received March* 23, 6·45 P.M.)

(Telegraphic.) *Paris, March* 23, 1893, 5·10 P.M.

THE Tribunal has adjourned till 4th April. It was decided that all proceedings should be public forthwith.

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## No. 20.

*Mr. Tupper to the Earl of Rosebery.—(Received March* 27.)

My Lord, *Paris, March* 25, 1893.

IT will be within your Lordship's recollection that on the 10th February last a Notice was addressed, at my request, by Sir Julian Pauncefote to the Agent for the United States for copies of certain documents quoted in the United States' Counter-Case.

Among these documents the Report of Mr. H. W. Elliott for the year 1890 was included.

Mr. Foster informed me, in his note of the 16th February, that the Government of the United States did not feel that they were bound by the Treaty to furnish a copy of the Report, and that he was therefore unable to comply with my request.

The matter appeared to me of so great importance, in consequence of the statements contained in the Report and of the prominent position occupied by Mr. Elliott on the question of seal life,* that, after consultation with Her Majesty's Attorney-General and the other Counsel engaged in the case, I addressed a letter to Mr. Foster, a copy of which is inclosed herewith, pressing for the production of the Report.

I have not yet received any reply to this letter.

Should Mr. Foster's answer not prove satisfactory, I propose to instruct Counsel to apply to the Tribunal to order the document to be produced.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure in No. 20.

*Mr. Tupper to Mr. Foster.*

Sir, *Paris, March* 23, 1893.

IN reference to your letter of the 16th February, 1893, in reply to my request for the production of the Report of Mr. H. W. Elliott, presented pursuant to Act of Congress, I desire to give you notice that the Government of Her Britannic Majesty will insist on their right to its production.

While desirous to avoid, as far as possible, contention on such matters before the Tribunal, I think it fair to give you notice that unless the Report, or a copy thereof, be produced, our Counsel will, on the 4th April, apply to the Tribunal to order its production.

In the event of your not having the Report, or a copy, in Paris, I give you this early intimation in order that you may communicate with the proper Department in Washington.

I am, &c.
(Signed) CHARLES H. TUPPER.

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### No. 21.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, March* 28, 1893.

I UNDERSTAND that, in consequence of the great mass of material which requires to be dealt with in the pleadings before the Tribunal of Arbitration, the Attorney-General and Sir R. Webster are desirous of having the services of Mr. F. T. Piggott, of the Middle Temple, who has already rendered considerable assistance in the preparation of the Argument presented on behalf of Her Majesty's Government.

I have therefore arranged with the Lords Commissioners of Her Majesty's Treasury that Mr. Piggott should proceed forthwith to Paris.

Mr. Piggott's position will be that of Secretary to the Attorney-General, from whom he will receive instructions as to the duties on which he shall be employed.

I am, &c.
(Signed) ROSEBERY.

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### No. 22.

*Mr. Tupper to the Earl of Rosebery.—(Received March* 29.)

My Lord, *Paris, March* 28, 1893.

I HAVE the honour to transmit, for your Lordship's information, the accompanying copies of a correspondence which has passed between the United States' Agent and myself on the occasion of my having forwarded to the Arbitrators and to him copies of the Supplementary Report of the British Commissioners.*

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* See British Argument, pp. 147 *et seq.*

Finding that Mr. Foster has communicated to the Arbitrators a copy of his note to me protesting against the admission of the document, I have forwarded to them a copy of my reply.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure 1 in No. 22.

### *Mr. Tupper to the Behring Sea Arbitrators and Mr. Foster.*

THE Undersigned, Agent of Her Britannic Majesty, appointed to attend the Tribunal of Arbitration, has the honour to transmit herewith to copies, in duplicate, of the "Supplementary Report of the British Commissioners appointed to inquire into Seal Life in Behring Sea," referred to on p. 166 D of the Counter-Case presented on behalf of the Government of Her Britannic Majesty.

Duplicate copies of this document have been forwarded to the Agent of the United States [each of the Arbitrators].

The Undersigned has the honour to renew to the assurance, &c.

*Paris, March* 25, 1893.

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## Inclosure 2 in No. 22.

### *Mr. Foster to Mr. Tupper.*

THE Undersigned, Agent of the United States before the Tribunal of Arbitration convened in accordance with the provisions of the Treaty between the United States and Great Britain of the 29th February, 1892, has the honour to acknowledge the receipt, at 4·45 P.M. on yesterday (Sunday), the 26th instant, from the Hon. Charles H. Tupper, Her Britannic Majesty's Agent, of a note, dated the 25th instant, stating that he transmits with said note copies, in duplicate, of the "Supplementary Report of the British Commissioners appointed to inquire into Seal Life in Behring Sea," and also stating that duplicate copies of the same document have been forwarded to each of the Arbitrators; and, further, to say that, in the envelope containing said note were found two unbound printed documents.

The Undersigned cannot refrain from expressing his surprise that Her Majesty's Agent has conceived himself authorized to lay a paper, presumably bearing on the merits of the controversy between the Governments of the United States and Great Britain, before the members of the Tribunal, at a time and in a manner not allowed by the Treaty.

If the documents referred to may be thus submitted, the Undersigned is unable to perceive that Her Majesty's Agent may not submit to the Tribunal, at his pleasure, at any time, any paper containing evidence or other matter bearing upon the merits of the controversy. He herewith returns the documents referred to without examination, and begs to apprise Her Majesty's Agent that he will immediately address the Arbitrators, protesting against the course Her Majesty's Agent has taken, and requesting them to disregard the document.

He further gives notice to Her Majesty's Agent that the Tribunal of Arbitration will be moved, at its next session, that the document referred to be dismissed from attention, and returned to Her Majesty's Agent.

The Undersigned, &c.

(Signed) JOHN W. FOSTER.

*Paris, March* 26, 1893.

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* Copies of this Report, with other papers laid before the Tribunal, will be deposited in the Library of each House of Parliament.

### Inclosure 3 in No. 22.

*Mr. Tupper to Mr. Foster.*

THE Undersigned, Agent of Her Britannic Majesty appointed to attend the Tribunal of Arbitration convened under the provisions of the Treaty concluded at Washington on the 29th February, 1892, has the honour to acknowledge the receipt of the Hon. John W. Foster's communication of this day's date, and, in reply thereto, desires to state that it is the view of Her Majesty's Government that the mode of procedure contemplated by the Treaty has not been accurately followed.

While all the material bearing on the whole subject-matter in dispute intended to be used by either party was to be submitted to the other party, that part of such material which bore only on the question of Regulations—and particularly the Report or Reports, joint or several, of the Commissioners of the two countries—should have been, it is believed, kept distinct from that part which bore on the questions of right, and that the latter should alone, in the first instance, have been submitted to the Arbitrators, the former, namely, that part relating to Regulations, only when the contingency therefor arose, or, in other words, when the determination of the questions of exclusive right had been arrived at.

It was upon this principle that the original Case of Great Britain was framed, and this course would have been followed but for the objections raised by the United States, as stated in Mr. Foster's letter to Mr. Herbert of the 27th September, 1892.

In deference to those representations, and in order to facilitate the progress of the Arbitration, Her Majesty's Government, while maintaining the justice of their contention, furnished to the Government of the United States and to the Arbitrators the separate Report of the British Commissioners and its Appendices, reserving at the same time their rights, as stated in Lord Rosebery's despatch to Mr. Herbert of the 13th October, 1892.

The Government of the United States, in presenting to the Arbitrators with their original Case the separate Report of the United States' Commissioners, had, in the opinion of Her Majesty's Government, departed from the mode of procedure contemplated by the Treaty. It was in pursuance of the understanding contained in the correspondence above referred to that Her Majesty's Government furnished to the Agent of the United States and to the Arbitrators the Supplementary Report of the British Commissioners which was referred to on p. 166 D of the British Counter-Case.

At the proper time Her Majesty's Government will submit to the Arbitrators that they are entitled to use this Supplementary Report, and they are quite willing that copies should remain in the hands of the Representatives of the United States without prejudice to any objection they may desire to raise.

The Government of Her Britannic Majesty believe that the Arbitrators will desire to have at their disposal any trustworthy information which may assist them upon the questions referred to them for decision.

If, as the Undersigned understands, a communication on this subject has been addressed by Mr. Foster to the Arbitrators, Her Majesty's Government will forward to them a copy of Mr. Foster's note of the 27th instant, and of this reply thereto.

The Undersigned, &c.

(Signed) CHARLES H. TUPPER.

*Paris, March* 27, 1893.

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### Inclosure 4 in No. 22.

*Mr. Tupper to the Behring Sea Arbitrators.*

THE Undersigned, Agent of Her Britannic Majesty appointed to attend the Tribunal of Arbitration, has the honour to inclose, for the information of , a copy of a note which he has addressed to the Agent of the United States in reply to a protest received from him against the presentation of the Supplementary Report of the British Behring Sea Commissioners which was forwarded to on the 25th instant.

The Undersigned has the honour to renew to the assurance, &c.

*Paris, March* 27, 1893.

## No. 23.

*Mr. Tupper to the Earl of Rosebery.—(Received March 30.)*

My Lord, *Paris, March 28, 1893.*

I HAVE the honour to transmit to your Lordship a copy of a note I have received this day from the Agent of the United States, informing me that a motion will be made on behalf of the United States' Government at the meeting of the Tribunal on the 4th proximo for the rejection of certain claims for damages specified in the Counter-Case of Her Majesty's Government.

I have acknowledged the receipt of Mr. Foster's communication.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure in No. 23.

*Mr. Foster to Mr. Tupper.*

THE Undersigned, Agent of the United States before the Tribunal of Arbitration convened at Paris, has the honour to give notice to the Agent of Her Britannic Majesty, that, at the next meeting of the Tribunal of Arbitration, a motion will be made on the part of the United States to dismiss from the Arbitration so much of the demand of the Government of Great Britain as relates to the sum stated upon p. 315 of the Counter-Case of said Government to have been incurred on account of expenses in connection with proceedings before the Supreme Court of the United States;

And also to dismiss from said Arbitration the claim and request of the same Government, mentioned in said p. 315, that the Arbitrators find what catch or catches might have been taken by pelagic sealers in Behring Sea without undue diminution of the herd during the pendency of the Arbitration;

And also to dismiss from the Arbitration the claim of the same Government, mentioned on the same page, 315, to show payments by it to Canadian owners of sealing-schooners;

And that all proofs or evidences relating to the foregoing claims or matters, or either of them, be stricken from the British Counter-Case, and, in particular, those found on pp. 215 to 229, inclusive, of vol. ii of Appendix to said Counter-Case.

The ground of the foregoing motion or motions is that the claims and matters aforesaid are, and each of them is, presented for the first time in the Counter-Case of the Government of Great Britain, and that they are not, nor is either of them, pertinent or relevant by way of reply to the Case of the United States, or to anything contained therein, except so far as the same may tend to support claims for damages distinctly made in the original Case of the Government of Great Britain, and that, so far as they come under that head, the matters are irregular as being cumulative only.

The Undersigned, &c.
(Signed) JOHN W. FOSTER.

*Paris, March 28, 1893.*

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## No. 24.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, April 3, 1893.*

I HAVE received your despatch of the 28th ultimo, inclosing correspondence which has passed between the United States' Agent and yourself, on the occasion of your having forwarded to him and to the Arbitrators, copies of the Supplementary Report of the British Commissioners.

The action taken by you in this matter is approved by Her Majesty's Government.

I am, &c.
(Signed) ROSEBERY.

## No. 25.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 7.)

My Lord, *Paris, April* 5, 1893.

I HAVE the honour to report to your Lordship, that at the meeting of the Tribunal held yesterday the proceedings were opened by an application made by the Attorney-General, in the name of Her Majesty's Government, for the production of the Report by Mr. H. W. Elliott, on seal life.

Sir Richard Webster supported the application, and was followed on the side of the United States by Mr. Phelps and Mr. Carter.

The Representatives of the United States denied that Her Majesty's Government were entitled under the Treaty to any order by the Tribunal for the production of the document as a matter of right; but, they stated, they were willing to waive their right of objection, and to furnish a copy for such use, as evidence, as the Tribunal might allow

The Tribunal finally directed that the document should be regarded as before the Tribunal, to be made such use of as the Tribunal should see fit.

The question of the rejection of certain claims for damages, put forward in the British Counter-Case, referred to in my despatch of the 28th ultimo, was then raised by the United States' Representatives, and the Tribunal decided that the matter should stand over for future consideration.

Mr. Phelps then proceeded to propose the rejection of the Supplementary Report of the British Commissioners in accordance with Mr. Foster's notice, of which I forwarded a copy to your Lordship in my despatch of the 28th ultimo. The argument of the United States' Counsel on this point had not concluded when the Tribunal adjourned.

I have the honour to transmit to your Lordship herewith a rough proof of the transcript of the short-hand notes of the proceedings, of which the above is a brief summary.*

It has been arranged that these rough proofs, which are to be furnished on the morning after each meeting to both sides, as well as to the Tribunal, shall be corrected and issued in a final shape at the close of each week's proceedings.

It is believed that when the printers have had more experience, fewer errors will be found than in the document forwarded herewith, and steps have been taken to overcome the difficulties which are inevitable on the first occasion of a paper of this nature, being produced under great pressure, and in a foreign language.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 26.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 8.)

My Lord, *Paris, April* 6 1893.

AT the meeting of the Tribunal held yesterday, the argument of the United States against the admission of the Supplementary Report of the British Commissioners was continued by Mr. Phelps.

The Attorney-General replied on behalf of Great Britain, and had not finished his speech when the Tribunal rose.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 27.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 8.)

My Lord, *Paris, April* 7, 1893.

AT the meeting of the Tribunal yesterday, the discussion with regard to the admission of the Supplementary Report of the British Commissioners was continued by Sir Charles Russell, who, at the close of his speech, was complimented by the President on the lucid manner in which he had stated his argument.

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* Full sets of the corrected short-hand notes, which cover in all 2,336 pages (folio) of print, will be deposited in the Library of each House of Parliament.

Mr. Carter followed on the part of the United States, and had not concluded when the hour of adjournment arrived.

The discussion of this question will, in all probability, be terminated at the meeting to-morrow,

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 28.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 11.)

My Lord, *Paris, April* 9, 1893.

AT the meeting of the Tribunal on the 7th instant, Mr. Carter concluded his argument with regard to the admission of the Supplementary Report of the British Commissioners, and after a discussion between Counsel on both sides as to the bearing of certain portions of the diplomatic correspondence on the interpretation of the Treaty, the Tribunal adjourned till Wednesday next, the 12th instant.

The President stated that the Arbitrators would hold a private meeting on Tuesday.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 29.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 13.)

My Lord, *Paris, April* 11, 1893.

SHORTLY after my arrival here Mr. Foster assented to a tentative arrangement that the proceedings before the Tribunal should be reported by a London firm of short-hand writers employed by both parties, and that printed copies of the transcript should be supplied on the morning after each meeting to each party and to the members of the Tribunal.

Your Lordship has been supplied with rough proofs of these reports, and notwithstanding the printer's errors, inevitable under the circumstances, it was considered by the British Counsel and myself that these proofs, which have shown considerable improvement since the beginning, were not wholly unsatisfactory.

The arrangement was made with the approval of the Tribunal, and the President stated, at a recent meeting, that the reports furnished had been found useful by the Arbitrators.

Mr. Foster, however, in a letter of which I have the honour to inclose a copy, has expressed his dissatisfaction at the working of the arrangement, and suggests that it should be terminated.

I have, after consultation with Counsel, addressed to Mr. Foster the reply, of which a copy is inclosed, and I trust that your Lordship will approve my action in the matter.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 29.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper, *Paris, April* 10, 1893.

I REGRET to have to inform you that the experience of the past week in the effort to produce a daily verbatim report of the proceedings of the Tribunal of Arbitration has not proved satisfactory. The main object had in view, namely, to lay before the Arbitrators the arguments of Counsel early on the day following their delivery, has in great measure failed. The Counsel of the United States find the reports of their arguments, as printed, so far from correct as to make it in great measure useless, and the burden imposed upon them of revision is an intolerable tax upon their time, and this of itself is a sufficient reason to make it desirable that the present arrangement be abandoned.

Up to the present writing we have not received from your side the first reading of the unrevised proof of either the first or any other succeeding day. After it is received we shall have numerous corrections of our own to make before it goes to the printer. It is therefore plain that the revised proof will not be ready to lay before the Arbitrators until they have considered in secret session, and possibly decided, the motion upon which the arguments have been made.

I do not wish to impute neglect or inefficiency to any one. I merely state that the system which we attempted with some misgivings has proved entirely unsatisfactory, and should be abandoned. I have, therefore, to propose that we at once give notice to the firm of short-hand reporters and the printers that the effort at further joint reporting come to an end; that we perfect and print the proceedings of the past week; that we settle with the short-hand firm and printers on mutually satisfactory terms; and that any further reporting will be left to each Agent to be done in such manner as he shall see fit for the convenience of the respective Counsel.

Very truly, &c.
(Signed) JOHN W. FOSTER.

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### Inclosure 2 in No. 29.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster, *Paris, April* 11, 1893.

I BEG to acknowledge the receipt of your letter of the 10th April.

I regret the determination you have reached respecting the daily reports of the Arbitration proceedings. I trust you will give this subject reconsideration.

I am glad to observe that you make no complaint regarding the actual short-hand writing. Messrs. Cherer, Bennet, and Co.'s reporting is, I believe, considered as perfect as it is possible to procure anywhere. Their transcripts, I am informed, are invariably used in all the English Law Courts. The correct printing of these transcripts is, therefore, alone concerned.

In my opinion, considering the difference of language and the very great pressure of time, the work already done does Messrs. Chamerot et Cie. credit.

These gentlemen cannot yet be said to have had a fair trial. From the marked improvement shown in each succeeding day, I am led to hope that in a very few days the reports will be quite satisfactory.

Touching the burden of the correction of proof, up to the present time it has not been found necessary to ask the British Counsel to revise their speeches at all. The corrections, which are principally typographical and grammatical, have been readily made by one of our staff who heard the argument.

If this work becomes too heavy to be executed in the short time available, the object in view would be well worth the expense of employing a special reader.

The British Government attach great importance to an accurate verbatim record of the actual arguments used, and, in view of their value to the Tribunal and their obvious utility, I trust you may yet see your way to continue the present arrangement.

Yours very truly,
(Signed) CHARLES H. TUPPER.

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### No. 30.

*Mr. Tupper to the Earl of Rosebery.—(Received April* 13.)

My Lord, *Paris, April* 12, 1893.

I HAVE the honour to report to your Lordship that at the meeting of the Tribunal this morning the President announced the decisions of the Arbitrators on the questions of the admission of the Supplementary Report of the British Commissioners, and of the consideration of the proposal of the United States that certain claims put forward in the Counter-Case of Great Britain should be struck out.

I have the honour to inclose copies of these decisions as delivered by the President in French. An English translation was afterwards read by him.

Your Lordship will observe that with regard to the Supplementary Report of the British Commissioners, the Tribunal has decided that it shall not be admitted for the present. Full liberty is, however, reserved to the Representatives of Great Britain to make use of the document in oral argument should they see fit to do so.

The question of the admissibility of the Appendices to the Supplementary Report is reserved for further examination without prejudice to the rights of the parties to discuss the matter and to refer to the documents in the course of oral argument.

With regard to the proposal of the United States to strike out certain claims included in the British Counter-Case, the Tribunal has decided to postpone the consideration of the question until such time as it may see fit.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure 1 in No. 30.

*Decision of Tribunal.*

LE Tribunal décide de ne pas recevoir, quant à présent, le document intitulé: "Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring," daté du 31 Janvier, 1893, et signé de George Baden-Powell et George M. Dawson, lequel a été remis aux Arbitres individuellement par l'Agent de la Grande-Bretagne le 25 Mars, 1893, et contient une critique des moyens de preuve produits dans les pièces et documents précédemment remis aux Arbitres, ou une argumentation portant sur les dits moyens de preuve. Toute liberté demeure néanmoins réservée aux Représentants de la partie intéressée de s'approprier le dit document, daté du 31 Janvier, 1893, pour l'incorporer à leur plaidoirie, s'ils le jugent convenable. La question de l'admissibilité des pièces, ou de quelqu'une d'entre elles, formant Annexes au dit document du 31 Janvier, 1893, est réservée à un examen ultérieur, sans préjudice du droit pour les Représentants des deux parties de discuter la question dont il s'agit, ainsi que le contenu des dites Annexes au cours de leurs plaidoiries.

(Translation.)

IT is ordered that the document entitled a "Supplementary Report of the British Behring Sea Commissioners," dated the 31st January, 1893, and signed by George Baden-Powell and George M. Dawson, and delivered to the individual Arbitrators by the Agent of Her Britannic Majesty on the 25th day of March, 1893, and which contains a criticism of, or argument upon, the evidence in the documents and papers previously delivered to the Arbitrators, be not now received, with liberty, however, to Counsel to adopt such document, dated the 31st January, 1893, as part of their oral argument, if they deem proper. The question as to the admissibility of the documents, or any of them, constituting the Appendices attached to the said document of the 31st January, 1893, is reserved for further consideration, without prejudice of the right of Counsel, on either side, to discuss that question, or the contents of the Appendices, in the course of the oral argument.

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## Inclosure 2 in No. 30.

*Decision of Tribunal.*

LE Tribunal décide qu'il différera, jusqu'à tel moment qui sera par lui ultérieurement indiqué, d'entendre plaider ou de prendre en considération la motion présentée le 4 Avril, 1893, par les États-Unis d'Amérique, tendant à la radiation de certains passages faisant partie du Contre-Mémoire et des moyens de preuve du Gouvernement de la Grande-Bretagne.

(Translation.)

IT is ordered that the argument and consideration of the motion made by the United States of America on the 4th day of April, 1893, to strike out certain parts of the Counter-Case and proofs of the Government of Great Britain, be postponed until such time as may be hereafter indicated by the Tribunal.

## No. 31.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 14.)

My Lord, *Paris, April* 12, 1893.

WITH reference to my despatch of yesterday, I have the honour to transmit to your Lordship a copy of a letter from Mr. Foster, informing me that he adheres to his proposal for the abandonment of the joint shorthand reports of the proceedings before the Tribunal.

It appears very desirable that full reports of the speeches on both sides should exist.

I therefore propose, after consultation with Counsel, to continue to employ the shorthand writers and printers on behalf of Her Majesty's Government, and to supply the members of the Tribunal with copies as usual.

In forwarding these copies to the Arbitrators I shall explain to them that the United States' Agent has withdrawn from the arrangement, that the speeches of the British Counsel will be revised by the British Agent, and that in order as far as possible to insure the accuracy of the reports of the speeches of the United States' Counsel, they will be carefully read over against the original notes in shorthand.

I trust your Lordship will approve of my action in this matter.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure in No. 31.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper, *Paris, April* 12, 1893.

YOUR letter of the 11th instant respecting the shorthand reports has been received and duly considered.

After again submitting the subject to the Counsel of the United States and taking their views thereon, I regret to say that I am constrained to adhere to the proposal contained in my letter of the 10th instant.

Very truly,
(Signed) JOHN W. FOSTER.

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## No. 32.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 14.)

My Lord, *Paris, April* 13, 1893.

AT the meeting of yesterday, the President opened the sitting by announcing the decisions of the Tribunal on the two questions which were brought before it last week. I have already forwarded copies of these decisions to your Lordship in my despatch of yesterday.*

In accordance with the arrangement agreed upon between the Counsel on both sides, which was explained to the Tribunal by Sir Charles Russell, as reported at p. 195 of the shorthand notes, Mr. Carter proceeded to open the case on behalf of the United States' Government.

He commenced by stating that he would lay before the Tribunal a sketch of the controversy from the beginning, before entering upon a discussion of the particular questions which had arisen.

Mr. Carter had brought his exhaustive summary of the various steps of the controversy down to the negotiations in January 1890, when the hour of adjournment arrived.

I have, &c.
(Signed) CHARLES H. TUPPER.

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* No. 30.

## No. 33.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, April* 15, 1893.

I HAVE received your despatches of the 11th and 12th instant, relative to the proposal made by Mr. Foster that the arrangement for joint shorthand reports of the proceedings before the Behring Sea Arbitration Tribunal shall be abandoned.

In reply, I have to express to you my approval of the view you have taken of this matter, and of the course you propose to pursue in continuing to employ the shorthand writers and printers on behalf of Her Majesty's Government.

I shall be glad to receive from you an estimate of the cost of the staff of reporters, and of printing the reports.

I am, &c.
(Signed) ROSEBERY.

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## No. 34.

*Mr. Tupper to the Earl of Rosebery.—(Received April* 15.)

My Lord, *Paris, April* 14, 1893.

AT the meeting of yesterday, Mr. Carter continued his preliminary sketch of the various steps in the negotiations, and brought this part of his address to a conclusion shortly before the hour of adjournment arrived.

While generally confining himself to a recital or summary of the various documents, he made some remarks and criticisms on the arguments contained in some of the more important despatches.

Having concluded his preliminary sketch, Mr. Carter then proceeded to address the Tribunal on the law which should govern it in its deliberations, and was only able to make slight progress in this branch of his subject before the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 35.

*Mr. Tupper to the Earl of Rosebery.—(Received April* 17.)

My Lord, *Paris, April* 16, 1893.

AT the meeting of the 14th instant, Mr. Carter continued his observations on the law which should govern the Tribunal in its decision. The knowledge of this law was, he said, to be derived from the actual practice and usages of nations and from the law of nature, which latter he argued was best illustrated by municipal law.

Having concluded this portion of his address, he entered upon the consideration of the rights claimed by Russia over the regions about Behring Sea, and the rights which the United States might have derived from the Act of Cession of the territory of Alaska.

The general purport of his argument was that Russia was intent on securing to her own subjects the valuable fur-seal industry, and that by the Ukase of 1821, she did not claim the waters of those regions as *mare clausum*, but merely enacted a protective regulation for the purpose of preserving that industry.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 36.

### *Mr. Tupper to the Earl of Rosebery.—(Received April* 20.)

My Lord, *Paris, April* 18, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols of the first two meetings of the Arbitration Tribunal.

A copy of the first Protocol has already been forwarded to your Lordship in my despatch of the 24th February, but the original and the official printed copies have only been issued this day.

Some delay has occurred in the completion of these documents, owing to deficiencies in the organization of the Secretariat of the Tribunal.

The remaining Protocols will, however, be issued very shortly.

I have retained the two original signed Protocols, of which the copies are transmitted herewith.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure in No. 36.

### *Protocole No.* 2.—*Séance du Jeudi,* 23 *Mars,* 1893.

LE Tribunal s'est réuni à Paris, comme il avait été convenu, dans l'Hôtel du Ministère des Affaires Étrangères de France.

Étaient présents les sept membres du Tribunal Arbitral :

L'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis,

Et l'Honorable John T. Morgan, Sénateur des États-Unis, Arbitres désignés par les États-Unis ;

Son Excellence le Baron Alphonse de Courcel, Sénateur Français, Arbitre désigné par la France;

Le Très Honorable Lord Hannen, Pair d'Angleterre, siégeant à la Cour Suprême d'Appel,

Et Sir John Thompson, Ministre de la Justice du Dominion de Canada, Arbitres désignés par la Grande-Bretagne ;

Son Excellence le Marquis Emilio Visconti Venosta, Sénateur Italien, Arbitre désigné par l'Italie,

Et son Excellence M. Gregers Gram, Arbitre désigné par la Suède et Norvège.

L'Honorable John W. Foster et l'Honorable Charles H. Tupper, Ministre de la Marine et des Pêcheries du Dominion de Canada, assistent à la séance comme Agents des Gouvernements des États-Unis et de la Grande-Bretagne.

Les membres du Tribunal Arbitral s'assurent que leurs pouvoirs respectifs sont en bonne et valable forme.

Lord Hannen, l'un des Arbitres désignés par la Grande-Bretagne, se lève pour proposer que M. le Baron de Courcel, Arbitre désigné par la France, soit prié par ses collègues de prendre la Présidence du Tribunal.

L'Honorable J. Harlan, l'un des Arbitres désignés par les États-Unis, appuie la proposition de Lord Hannen.

Les autres membres du Tribunal Arbitral ayant acquiescé à la proposition, M. le Baron de Courcel prend place au fauteuil de la Présidence et prononce les paroles suivantes :

Messieurs,

Vous me faites bénéficier de l'usage courtois qui, dans les réunions d'un caractère international, attribue au Représentant du pays où elles siègent la Présidence de leurs travaux. Je vous en remercie pour mon pays et pour moi-même.

Lorsque les Gouvernements de la Grande-Bretagne et des États-Unis d'Amérique ont décidé de terminer par les voies amiables d'un arbitrage le litige déjà ancien des pêcheries de Behring, et lorsqu'ils ont choisi Paris pour siège du Tribunal Arbitral institué en vertu de leurs accords, ils ont fait à la France et à sa capitale un honneur insigne. J'ose dire que l'une et l'autre en étaient dignes.

Nulle part assurément vous ne sauriez trouver l'atmosphère d'un plus sincère, d'une plus chaleureuse sympathie pour l'œuvre grande et bonne que vous êtes chargés de poursuivre. A travers les chocs et les épreuves qu'inflige inévitablement à tous les hommes la dure réalité des choses, la France est demeurée une nation obstinément idéaliste; toute conception généreuse la touche et l'entraîne; elle est passionnée pour la cause du progrès dans l'humanité. Or quel but plus idéal quel progrès plus noble et plus digne de recherche que la disparition graduelle des recours à la force brutale entre les peuples de la terre? La procédure arbitrale y vise, et chaque arbitrage nouveau nous en rapproche, en fournissant une preuve de plus de la possibilité matérielle de ce qui, hier encore, n'apparaissait que comme un rêve.

Il y a quelques années, les Arbitres convoqués à Genève, par l'autorité pacifique d'une sentence que deux fières et puissantes nations s'étaient engagées d'avance à accepter, mettaient heureusement fin à une discussion qui semblait n'avoir d'autre issue possible que la guerre. L'arbitrage de l'Alabama fait époque dans l'histoire des relations internationales: on peut dire qu'il a rajeuni l'antique droit des gens, et qu'il lui a ouvert une ère nouvelle, avec la perspective d'une action indéfiniment bienfaisante. Les deux nations qui se sont soumises au verdict de Genève, malgré des sacrifices qui, dans les premiers moments, ont pu coûter à l'une et à l'autre, ne se sont pas repenties à la longue de leur appel à la force purement morale, puisqu'elles-mêmes le renouvellent aujourd'hui, d'un commun accord, dans des circonstances analogues.

Le procès qui va se plaider devant vous n'est point de ceux, il est vrai, qui, selon l'apparence, pouvaient déchaîner le redoutable fléau de la guerre. Mais, en dehors de cette extrémité fatale, combien de maux ne causent point aux peuples un refroidissement durable et la persistence de sentiments amers! Comme les individus, les nations se doivent la charité; et lorsque, cédant aux conseils de l'orgueil, elles manquent à la loi providentielle, elles se condamnent elles-mêmes à bien des souffrances. Si les conciliations de l'arbitrage n'avaient d'autre effet que de les préserver de ce péril, elles feraient encore aux peuples un bien incalculable, et serviraient très utilement la fraternité humaine.

Votre présence dans cette salle, Messieurs, est le plus éloquent témoignage du prix qui s'attache à la décision attendue de vous. L'Angleterre, de tout temps si féconde en éminents jurisconsultes, les États-Unis, le Canada, qui continuent à leur tour, dans le nouveau monde, une tradition dont l'origine atavique doit être cherchée peut-être sur notre vieux sol Normand, ont député ici des personnages dont la science et la rare perspicacité ont été éprouvées dans les hautes et les plus délicates fonctions de la magistrature, ou dans les discussion d'assemblées politiques renommées pour leur prudence. A côté d'eux, je vois siéger un homme d'État, sage héritier de l'illustre Cavour, et dont la diplomatie Européenne, aux conseils de laquelle il manque n'a pas cessé de regretter la retraite prématurée et volontaire. Un autre de nos collègues, venu du Nord Scandinave, et que sa réputation a devancé ici, occupait naguère dans sa patrie, l'un des postes les plus élevés que puisse conférer la juste confiance du Souverain de deux Royaumes jumeaux, également jaloux de leur individualité.

A votre barre se présentent, au nom des deux Grandes Puissances qui vous ont remis le règlement de leur cause, des hommes politiques de premier ordre. L'un d'eux dirigeait hier les relations internationales de la grande République Américaine.

Ils sont assistés de Conseils habitués à briller au premier rang, tantôt au barreau, tantôt dans le Gouvernement de leur pays, et que l'admiration de leurs concitoyens, de chaque côté de l'Atlantique, salue du titre de princes de l'éloquence.

C'est un honneur qui suffit à illustrer une existence entière que d'être appelé à siéger près de pareils hommes. La responsabilité de les présider serait bien effrayante, si celui de leurs collègues qu'ils ont chargé de cette tâche ne devait compter sur leur indulgent et infaillible appui.

Puisse la Divine Providence, de qui relèvent toutes les actions des hommes, nous donner la force et nous inspirer la sagesse nécessaire pour accomplir notre difficile mission, et pour marquer ainsi une étape vers la réalisation de la parole pleine de consolation et d'espoir de Celui qui a dit: "Bienheureux les pacifiques, car la terre leur appartiendra."

Messieurs, je crois être l'interprète de votre pensée à tous en vous proposant d'interrompre ici notre séance, afin de porter à M. le Président de la République Française, avec l'hommage de nos respects, l'expression de notre gratitude pour l'hospitalité que nous recevons de la France.

Sur la proposition du Président, M. A. Imbert, Ministre Plénipotentiaire de France, est désigné comme Secrétaire du Tribunal Arbitral. M. le Baron de Courcel invite ensuite les Arbitres Anglais et Américains à désigner, pour chacune des deux nationalités, un Secrétaire qui serait adjoint au Secrétaire du Tribunal. Il est convenu que cette désignation aura lieu à la prochaine séance.

Le Tribunal fixe les jours et heures de ses séances.

Conformément aux stipulations du Traité de Washington du 29 Février, 1892, les Agents des Gouvernements des États-Unis et de la Grande-Bretagne déposent devant le Tribunal les Arguments imprimés de leurs Gouvernements respectifs.

L'Agent des États-Unis ayant signalé que, par suite d'une erreur accidentelle commise à l'impression, il existait une omission dans les citations jointes en appendice à l'Argument des États-Unis, autorisation lui a été donnée de déposer ultérieurement, comme annexe à l'Argument, un supplément contenant les citations omises, sous réserve du droit pour le Gouvernment Britannique de présenter une réplique à ces citations, s'il le jugeait opportun.

Les Agents des deux Gouvernements ont annoncé qu'ils avaient pris, de commun accord, des arrangements pour faire sténographier chaque jour les débats du Tribunal.

Il est déclaré que le public sera admis aux débats, sur la présentation de cartes nominatives délivrées par le Secrétaire du Tribunal.

Ainsi fait à Paris, le 23 Mars, 1893, et ont signé:

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|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No. 2.—Meeting of Thursday, March* 23, 1893.

THE Tribunal assembled at Paris, as had been agreed, at the French Ministry for Foreign Affairs.

There were present the seven members of the Tribunal of Arbitration:

The Honourable John M. Harlan, Justice of the Supreme Court of the United States,

And the Honourable John T. Morgan, Senator of the United States, the Arbitrators named by the United States;

His Excellency the Baron Alphonse de Courcel, Senator of France, the Arbitrator named by France;

The Right Honourable Lord Hannen, Lord of Appeal,

And Sir John Thompson, Minister of Justice for the Dominion of Canada, the Arbitrators named by Great Britain;

His Excellency the Marquis E. Visconti Venosta, Senator of Italy, the Arbitrator named by Italy;

And his Excellency M. Gregers Gram, the Arbitrator named by Sweden and Norway;

The Honourable John W. Foster and the Honourable Charles H. Tupper, Minister of Marine and Fisheries for the Dominion of Canada, were present at the meeting as Agents for the Governments of the United States and Great Britain.

The members of the Tribunal of Arbitration assured themselves that their respective powers were in due and valid form.

Lord Hannen, one of the Arbitrators named by Great Britain, rose to propose that his Excellency the Baron de Courcel, the Arbitrator named by France, should be requested by his colleagues to assume the Presidency of the Tribunal.

The Honourable John M. Harlan, one of the Arbitrators named by the United States, supported the proposal of Lord Hannen.

The other members of the Tribunal of Arbitration having agreed to the proposal, Baron de Courcel took the chair as President, and delivered the following address:

Gentlemen,

You have been pleased to exercise in my favour that courteous usage which, in proceedings of an international character, confers the Presidency upon the Representative of the country in which the meeting is held.

The Governments of Great Britain and the United States of America have determined to end the long-standing dispute concerning the Behring fisheries by a friendly arbitration, and in choosing Paris for the seat of it, they have paid a distinguished compliment to France and to her capital city.

I venture to say that both are worthy of it.

Nowhere, be sure, would you have found yourselves surrounded by a more sincere and warm sympathy with the great and good work which you are charged to carry out. Through all the shocks and trials which the hard necessity of events inflicts upon mankind, France has remained steadfast to ideals. Every generous conception moves and captivates her. She has a passion for the cause of human progress. And what aim can be more ideal, what progress more noble and worthy of attainment than the gradual disappearance from among the people of the earth of a recourse to brute force.

This is the aim of procedure by arbitration, and each new recourse to it brings us nearer t that end, by furnishing another proof of the actual possibility of that which, even yesterday seemed but a dream.

Some years ago, by the peaceful authority of a decision which two proud and powerful nations had previously agreed to accept, the Arbitrators assembled at Geneva put a happy end to a dispute which it seemed at one time could only terminate in war.

The Geneva Arbitration was an epoch in international relations. It may be said to have revived the old law of nations, and opened to it a new era with a boundless prospect of beneficent consequences.

The two nations which submitted to the Geneva verdict, in spite of the sacrifices which at first it seemed to involve, have evidently not in the long run repented of their appeal to moral force, for to-day they renew that appeal by common consent, in analogous circumstances. It is true that the cause that is to be pleaded before us is not one which apparently would let loose the scourge of war; but, short of war, how many evils are caused to nations by lasting coldness and by the persistence of bitter sentiments. Like individuals, nations owe a duty to charity, and when yielding to pride they fail to obey the laws of Providence, they inflict upon themselves many sufferings.

If arbitrations had no other effect than to preserve them from this peril, they would be an incalculable blessing and service to the brotherhood of humanity.

Your presence in this room, Gentlemen, is the most eloquent evidence of the value which attaches to your expected decision.

England, from all time so rich in eminent jurists, America and Canada, who hand down in their turn, and in a new world, a tradition whose ancestral origin may, perhaps, be sought in our old Norman soil, have delegated men whose knowledge and rare penetration have been applied in the highest and most delicate functions in the magistracy or in the discussions of political assemblies whose prudence was renowned.

Beside them I see a politician, a wise heir of the illustrious Cavour, whose premature and voluntary retreat from European diplomacy has been the subject of deep regret.

Another of our colleagues from North Scandinavia, whose reputation has preceded him, has occupied one of the highest positions which could be conferred upon him by the just confidence of the Sovereign of two Twin Kingdoms, each equally jealous of its individuality.

At your bar, to represent the two great Powers who have confided their cause to you, appear politicians of the first order. One of them only lately guided the foreign relations of the great American Republic. They are assisted by Counsel accustomed to occupy the front rank, either at the bar, or in the government of their country, and whom the admiration of their countrymen on each side of the Atlantic hails as princes of eloquence.

It is an honour sufficient to dignify an entire life to be asked to sit with men like these, and the responsibility of presiding among them would be overwhelming if he whom his colleagues have charged with this duty could not count on their unvarying and indulgent support.

May Divine Providence, on whom depends all human action, give us the strength and inspire us with the wisdom necessary to fulfil our difficult mission, and thus to advance a stage nearer to the realization of the words of consolation and hope of Him who has said, "Blessed are the peacemakers, for they shall inherit the earth."

Gentlemen, I trust that I represent your wishes in proposing to you to break up our present meeting, in order to convey our respects to the President of the French Republic, together with an expression of our gratitude for the hospitality which we are receiving from France.

On the proposal of the President, M. A. Imbert, a Minister Plenipotentiary of France, was named Secretary to the Tribunal of Arbitration. Baron de Courcel then invited the English and American Arbitrators to name, for their respective nationalities, a Secretary to be associated with the Secretary of the Tribunal. It was agreed that this appointment should be made at the next meeting.

The Tribunal fixed the days and hours of its meetings.

In conformity with the stipulations of the Treaty of Washington of the 29th February, 1892, the Agents of the Governments of the United States and Great Britain laid before the Tribunal the printed Arguments of their respective Governments.

The Agent of the United States having intimated that, owing to an oversight in printing, there was an omission in the appendices of authorities cited in the Argument of the United States, he was authorized to present at a later date, as an appendice to the Argument, a supplement containing the citations omitted, with the reserve of the right, on the part of the British Government, to present a reply to the citations, should they deem it to be necessary.

The Agents of the respective Governments stated that they had agreed to arrange for taking shorthand reports of the daily proceedings.

It was announced that the proceedings were now public, and admission to the discussions would be upon the presentation of cards of admission to be issued by the Secretary of the Tribunal.

The Tribunal of Arbitration adjourned till the 4th April next.
Done at Paris, the 23rd March, 1893, and signed:

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|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States.. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## No. 37.

*Mr. Tupper to the Earl of Rosebery.—(Received April* 20.)

My Lord, *Paris, April* 18, 1893.

WITH reference to your Lordship's despatch of the 15th instant and previous correspondence, I have the honour to transmit to your Lordship a copy of a statement handed to me to-day by Mr. Foster, containing an explanation of his reasons for withdrawing from the arrangement for a joint shorthand report of the proceedings before the Tribunal.

Mr. Foster said that his motives in declining, on the part of the United States, to be a party to the arrangement any longer, had been misrepresented in the London press, and that he had therefore laid this statement before the Members of the Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure in No. 37.

*Statement by Mr. Foster.*

IN view of certain misleading statements in the London newspapers, the Agent of the United States desires to inform the Arbitrators of the reasons given by him to the British Agent for his action in withdrawing from the joint arrangement for a daily shorthand report of the proceedings of the Tribunal. Under date of the 10th instant, he informed the British Agent, in view of the experience then had, that the main object of the arrangement, namely, to lay before the Arbitrators the argument of Counsel early on the day following their delivery, had failed; that the Counsel of the United States had found the reports of the Arguments, as printed, so far from correct as to make them in great measure useless, and that the burden imposed on them of revision was an intolerable tax upon their time. The report of the first week's argument (April 4th to 7th) had not been revised and put into intelligible shape before the motion upon which they had been made had been definitely decided by the Tribunal; and they have not, in fact, up to this date been laid before the Tribunal.

As no change in the existing arrangements was proposed by the British Agent, the Agent and Counsel of the United States felt it their duty to withdraw therefrom. The question of expense did not enter into the consideration of the subject.

*April* 18, 1893.

### No. 38.

*Mr. Tupper to the Earl of Rosebery.*—(*Received April* 21.)

My Lord, *Paris, April* 20, 1893.

AT the meeting of yesterday, Mr. Carter continued his argument on the question of the alleged property interest of the United States in the fur-seals.

His remarks were in the main directed to an examination of the question as to what constitutes property, and what are the rights and responsibilities of those in whom the property is vested. He had not concluded this portion of his argument when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### No. 39.

*Mr. Tupper to the Earl of Rosebery.*— (*Received April* 22.)

My Lord, *Paris, April* 21, 1893.

AT yesterday's meeting, Mr. Carter continued his argument on the alleged property right of the United States in the fur-seals. He proceeded to apply the principles of property which he had enumerated on the previous day to the case of the seals, and for this purpose entered at some length into the question of their habits, their management by the United States on the islands, and their capture both on land and by pelagic sealing.

He criticised the Report of the British Commissoners at some length, and claimed that owing to its biassed character, the opinions expressed by them should be discarded by the Tribunal.

He had not concluded this portion of his argument when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### No. 40.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 1.)

My Lord, *Paris, April* 24, 1893.

AT the meeting of the 21st instant, Mr. Carter continued his argument on the claim of the United States to property in the fur-seals.

He concluded the first head of this subject, which deals with the claim to property in the animals themselves, and then proceeded to argue that the United States had also a property interest in, and right of protection of, the industry carried on at the Seal Islands.

He had not finished his observations on this point when the Tribunal rose.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### No. 41.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 1.)

My Lord, *Paris, April* 25, 1893.

I REGRET to inform your Lordship that, owing to an attack of influenza, Lord Hannen was unable to attend the Tribunal of Arbitration to-day.

His Lordship's medical adviser is of opinion that he will be unable to resume his duties for some days.

It was therefore decided by the President, Baron de Courcel, that the Tribunal should adjourn until Tuesday, the 2nd May, by which date it is hoped that Lord Hannen will be sufficiently recovered to resume his attendance at the meetings.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 42.

*Mr. Tupper to the Earl of Rosebery.—(Received May 3.)*

My Lord, *Paris, May* 2, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 3, 4, and 5 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 42.

*Protocole No. 3.—Séance du Mardi, 4 Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 45, tous les Arbitres étant présents.

*Le Président* annonce que le Tribunal a décidé la nomination de M. A Bailly-Blanchard et de M. Cunynghame, comme Secrétaires du Tribunal, conjointement avec M. A. Imbert.

Et également celle de M. le Chevalier Bajnotti, de M. Henri Feer, et de M. le Vicomte de Manneville, comme Secrétaires Adjoints.

*Le Président* annonce que le Tribunal est prêt à entendre toute motion que pourrait présenter l'une ou l'autre des parties.

*Sir Charles Russell* prend la parole et termine sa plaidoirie en présentant la motion suivante :—

" Que l'Agent des États-Unis soit invité à produire l'original ou une copie certifiée du Rapport fait par Henry W. Elliott au sujet des phoques à fourrure conformément à l'Acte du Congrès de 1890."

*Sir Richard Webster* parle dans le même sens.

*L'Honorable E. J. Phelps* réplique et présente la réponse suivante à la motion :—

" Le Gouvernement des États-Unis se refuse à admettre que le Gouvernement de Sa Majesté Britannique soit autorisé en droit, d'après les dispositions du Traité, à obtenir du Tribunal un ordre pour la production du document visé par la motion de Sir Charles Russell.

" Toutefois, le Gouvernement des États-Unis est disposé, en ce qui le concerne, à ne pas user du droit qu'il aurait d'élever cette objection et à fournir à l'Agent du Gouvernement de Sa Majesté une copie du document en question, à telles fins de preuve que le Tribunal jugera à propos d'autoriser.

" Néanmoins, cette façon de procéder n'implique pas, de la part du Gouvernement des États-Unis, l'acquiescement à ce qu'aucune des deux parties, à ce moment ou à toute autre époque de la procédure, ait le droit de présenter aucun autre moyen de preuve, quel qu'il soit, sur un sujet quelconque se rattachant à la controverse.

" Le même Gouvernement stipule en outre que, s'il est fait un usage quelconque du document auquel se rapporte cette motion, comme moyen de preuve, chacune des deux parties aura un droit égal à l'utiliser en tous les points qu'il contient."

*Mr. Carter* s'exprime ensuite dans le même sens.

Le Tribunal suspend alors sa séance.

A la reprise de la séance, *le Président* déclare ce qui suit :—

" Le Tribunal ordonne que le susdit document sera considéré comme étant devant le Tribunal pour qu'il en soit fait tel usage que le Tribunal jugera convenable.

*L'Agent des États-Unis* donne alors lecture des motions suivantes :—

"1. L'Agent des États-Unis désire appeler l'attention du Tribunal d'Arbitrage sur le fait que l'Agent de Sa Majesté Britannique a porté à sa connaissance, par une lettre en date du 25 Mars dernier, qu'il avait envoyé à chacun des membres du Tribunal des copies en duplicata d'un 'Rapport Supplémentaire des Commissaires Britanniques désignés pour faire une enquête sur les phoques de la Mer de Behring.'

"L'Agent des États-Unis, en raison de cette information, demande à l'honorable Tribunal que le document dont il s'agit ne soit pas pris en considération et qu'il soit retourné à l'Agent de Sa Majesté, par le motif qu'il est présenté à un moment et dans une forme que n'autorise pas le Traité.

"2. L'Agent des États-Unis demande à l'honorable Tribunal d'exclure de l'Arbitrage ce qui, dans la demande du Gouvernement de la Grande-Bretagne, a trait à la somme mentionnée à la page 315 du Contre-Mémoire du dit Gouvernement, comme ayant été dépensée pour frais occasionnés par la procédure devant la Cour Suprême des États-Unis ;

"Et d'exclure aussi de l'Arbitrage la réclamation et requête du même Gouvernement qui figurent à la dite page 315, tendant à ce que les Arbitres établissent quelle prise ou quelles prises auraient pu être effectuées par les chasseurs pélagiques dans la Mer de Behring sans indue diminution du troupeau de phoques pendant la durée de cet Arbitrage ;

"Et, de plus, d'exclure de l'Arbitrage la réclamation du même Gouvernement, mentionnée à ladite page 315, en vue d'être autorisé à établir les payements faits par lui aux propriétaires Canadiens de bâtiments employés à la chasse des phoques ;

"Et que toutes preuves ou tous témoignages ayant trait aux susdites réclamations ou questions, ou à l'une d'elles, soient rayés du Contre-Mémoire Britannique, et, en particulier, les preuves ou témoignages se trouvant aux pages 215 à 229 inclusivement du Tome ii de l'Appendice audit Contre-Mémoire.

"Le fondement de la motion ou des motions qui précèdent est que les réclamations et questions susmentionnées sont, ensemble ou chacune d'elles en particulier, présentées pour la première fois dans le Contre-Mémoire du Gouvernement de la Grande-Bretagne et qu'aucune d'elles, ensemble ou en particulier, ne se rapporte, ni ne se réfère, par voie de réplique, soit au Mémoire des États-Unis, soit à quoi que ce soit qu'il contienne, si ce n'est en ce qu'elles tendent à soutenir des réclamations en dommages-intérêts présentées expressément dans le Mémoire original du Gouvernement de la Grande-Bretagne, et que, en tant qu'elles tombent sous cette définition, lesdites demandes sont irrégulières comme faisant double emploi."

*Le Président* ayant fait observer qu'il conviendrait d'examiner séparément les motions et de renvoyer à une période ultérieure de la procédure la discussion de la seconde motion présentée au nom des États-Unis,

*L'Honorable E. J. Phelps* développe devant le Tribunal les arguments à l'appui de la première motion, celle qui est relative au Rapport Supplémentaire des Commissaires Britanniques.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 4 Avril, 1893, et ont signé :

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No. 3.—Meeting of Tuesday, April* 4, 1893.

At 11·45 the Tribunal assembled, all the Arbitrators being present.

*The President* announced that the Tribunal had decided to appoint Mr. A. Bailly-Blanchard and Mr. Cunynghame as co-Secretaries with M. Imbert.

Also, M. le Chevalier Bajnotti, M. Henri Feer, and M. le Vicomte de Manneville as Assistant Secretaries.

*The President* announced that the Tribunal was ready to hear any motion by either of the parties.

*Sir Charles Russell* then spoke, and at the close of his speech he submitted the following motion:—

"That the Agent of the United States be called upon to produce the original or a certified copy of the Report made by Henry W. Elliott on the subject of fur-seals pursuant to Act of Congress of 1890."

*Sir Richard Webster* supported the motion.

*The Honourable E. J. Phelps* replied and submitted the following answer to the motion:—

"The United States' Government denies that Her Britannic Majesty's Government is entitled, under the provisions of the Treaty, to any order by the Tribunal for the production of the document specified in the motion, as a matter of right.

"The United States' Government, however, is willing to waive (so far as it is concerned) its right of objection, and to furnish to the Agent of Her Majesty's Government a copy of the document referred to, for such use as evidence as the Tribunal may deem proper to allow.

Not conceding, however, in so doing, that either party at this or any subsequent stage of the proceedings has a right to introduce any further evidence whatever, upon any subject whatever, connected with the controversy.

"And further stipulating that if the document referred to in this motion shall be used in evidence at all, it shall be open to the use of both parties equally in all its points."

*Mr. James C. Carter* followed in support of the answer.

The Court adjourned for a short time.

On reassembling, the President said:—

"The Tribunal directs that the above-named document be regarded as before the Tribunal to be made such use of as the Tribunal thinks fit."

The Agent for the United States then read the following motions:—

"1. The Agent of the United States desires to bring to the attention of the Tribunal of Arbitration the fact that he has been informed by the Agent of Her Britannic Majesty, in a note dated the 25th ultimo, that he has sent to each of the members of the Tribunal copies in duplicate of a 'Supplementary Report of the British Commissioners appointed to inquire into seal life in Behring Sea.'

"The Agent of the United States, in view of this information, moves this honourable Tribunal that the document referred to be dismissed from consideration and be returned to Her Majesty's Agent, on the ground that it is submitted at a time and in a manner not allowed by the Treaty.

"2. The Agent of the United States moves this honourable Tribunal to dismiss from the Arbitration so much of the demand of the Government of Great Britain as relates to the sum stated upon p. 315 of the Counter-Case of the said Government to have been incurred on account of expenses in connection with proceedings before the Supreme Court of the United States;

"And, also, to dismiss from the Arbitration the claim and request of the same Government, mentioned on said p. 315, that the Arbitrators find what catch or catches might have been taken by pelagic sealers in Behring Sea without undue diminution of the seal herd during the pendency of this Arbitration;

"And, further, to dismiss from the Arbitration the claim of the same Government, mentioned on the said p. 315, to show payments by it to the Canadian owners of sealing-vessels;

"And that all proofs or evidence relating to the foregoing claims or matters, or either of them, be stricken from the British Counter-Case, and in particular those found on pp. 215 to 229 inclusive, of Vol. ii of the Appendix to said Counter-Case.

"The ground of the foregoing motion or motions is that the claims and matters aforesaid are, and each of them is, presented for the first time in the Counter-Case of the Government of Great Britain, and that they are not, nor is either of them, pertinent or relevant by way of reply to the Case of the United States or to anything contained therein, except so far as the same may tend to support claims for damages distinctly made in the original Case of the Government of Great Britain, and that so far as they come under that head the matters are irregular as being cumulative only."

The President having remarked that the motions should be considered separately, and that the discussion upon the second motion brought forward by the United States, should be postponed to a subsequent period of the proceedings, the Honourable E. J.

Phelps addressed the Court in support of the first motion relative to the Supplementary Report of the British Commissioners.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30.

Done at Paris, the 4th April, 1893, and signed:

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|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 2 in No. 42.

### *Protocole No. 4.—Séance du Mercredi, 5 Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 45, tous les membres étant présents.

*L'Honorable E. J. Phelps* continue et achève son argumentation de la veille.

*Mr. James C. Carter* déclare qu'il n'a aucune observation à ajouter.

*Sir Charles Russell* s'oppose à la motion en discussion, en se fondant sur les arguments suivants:—

"Que le Rapport Supplémentaire des Commissaires Britanniques, en date du 31 Janvier, 1893, n'est présenté qu'en ce qui concerne la question des Règlements, et que, d'après les dispositions du Traité d'Arbitrage du 29 Février, 1892, c'est avec raison qu'il est ainsi soumis au Tribunal, lequel aura à l'examiner à ce point de vue, au cas où il serait appelé à décider, en vertu de l'Article 7, la question de savoir s'il y a lieu de faire des Règlements communs, et, dans l'affirmative, quels devraient être ces Règlements."

Le Tribunal suspend alors sa séance.

A la reprise, *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 5 Avril, 1893, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No. 4.—Meeting of Wednesday, April 5,* 1893.

At 11·45 A.M. the Tribunal assembled, all the Arbitrators being present.

*The Honourable E. J. Phelps* continued his speech of the previous day and concluded his argument.

*Mr. James C. Carter* announced that he had no additional remarks to offer.

*Sir Charles Russell* opposed the motion under discussion on the following grounds:—

"That the Supplementary Report of the British Commissioners, dated the 31st January, 1893, is presented solely with reference to the question of Regulations, and, under the provisions of the Treaty of Arbitration of the 29th February, 1892, is properly presented to the Tribunal, and so should be considered by them in the event of their being called upon to determine, pursuant to Article 7, what, if any, concurrent Regulations are necessary."

The Tribunal adjourned for a short time.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30.

So done at Paris, the 5th April, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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### Inclosure 3 in No. 42.

### *Protocole No. 5.—Séance du Jeudi, 6 Avril,* 1893.

LE Tribunal s'est réuni à midi et demi, tous les Arbitres étant présents.

*Sir Charles Russell* reprend et achève son discours de la veille.

*Sir Richard Webster* déclare qu'il n'a rien à ajouter aux observations de Sir Charles Russell.

*Mr. James C. Carter* prend la parole pour soutenir la motion présentée au nom des États-Unis.

A 1 heure et demie le Tribunal suspend sa séance.

A la reprise, *Mr. James C. Carter* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures et demie.

Ainsi fait à Paris, le 6 Avril, 1893, et ont signe:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No. 5.—Meeting of Thursday, April* 6, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his speech of the previous day and concluded his argument.

*Sir Richard Webster* said that he had nothing to add to Sir Charles Russell's remarks.

*Mr. James C. Carter* replied in support of the motion made on behalf of the United States.

At 1·30 the Tribunal adjourned for a short time.

On reassembling, *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 6th April, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

## No. 43.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 4.)

My Lord, *Paris, May* 3, 1893.

AT the meeting of the Tribunal yesterday, Mr. Carter continued his argument, claiming for the United States the right to employ force upon the high seas for the defence of its property interest in the fur-seals and in the industry of the seal islands.

Having brought his observations on this point to a close, Mr. Carter proceeded to discuss the question of regulations.

This course was followed in accordance with an arrangement arrived at by the Counsel on both sides, whereby each party should be at liberty to present its arguments on the legal questions and regulations separately.

A discussion arose on this question, which your Lordship will find reported on pp. 525-528 of the shorthand notes.

Mr. Carter maintained that the regulations to be made by the Tribunal should not be confined to Behring Sea, but should extend outside that area wherever necessity required them.

The United States, he said, had no regulations to propose save one, namely, the total prohibition of the killing of all seals anywhere on the high seas. After a detailed criticism of the scheme of regulations proposed by the British Commissioners, Mr. Carter brought his long speech to a conclusion shortly before the hour of adjournment.

Mr. Coudert is to follow Mr. Carter on behalf of the United States at the next meeting.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 44.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 5.)

My Lord, *Paris, May* 4, 1893.

AT the meeting of yesterday, Mr. Coudert opened his speech, on behalf of the United States, which he said would be mainly devoted to a statement of the facts on which the argument of Mr. Carter depended. But before proceeding to a recital of these facts, he wished to add something to what had been stated by Mr. Carter in regard to the "self-defence" of the sealing industry.

His opening observations were therefore directed to this question, and he had not concluded this portion of his subject when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 45.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 6.)

My Lord, *Paris, May* 5, 1893.

AT the meeting of yesterday, Mr. Coudert continued his speech, and after some observations on the issues before the Tribunal proceeded to a detailed examination of the facts connected with seal life, which he had not concluded when the hour of adjournment arrived.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 46.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 8.)

My Lord, *Paris, May* 6, 1893.

I HAVE the honour to transmit for your Lordship copies of the official Protocols Nos. 6, 7, 8, and 9 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 46.

*Protocole No.* 6.—*Séance du Vendredi,* 7 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

*L'Honorable E. J. Phelps* appelle l'attention du Tribunal sur certaines erreurs dans le compte rendu sténographique.

*Le Président* fait observer que les seuls comptes rendus officiels garantis par l'autorité du Tribunal sont les Protocoles; la responsabilité des notes des sténographes incombe exclusivement aux Agents des deux Gouvernements.

*Mr. James C. Carter* reprend alors son argumentation pour les États-Unis.

Le Tribunal suspend sa séance à 1 heure 30.

A la reprise, *Mr. Carter* continue et achève sa plaidoirie.

Les Conseils des deux parties échangent alors, avec l'autorisation du Président, quelques explications complémentaires sur des points se rattachant aux plaidoiries qui viennent d'avoir lieu.

*L'Honorable E. J. Phelps* ayant demandé ensuite que l'on procédât à l'examen de la seconde motion, le Tribunal déclare qu'il fera connaître ses intentions à ce sujet dans la prochaine séance.

A 3 heures 50 la séance est levée et le Tribunal s'ajourne à Mardi pour une réunion privée, la séance publique étant remise au Mercredi, 12 Avril, 1893.

Ainsi fait à Paris, le 7 Avril, 1893, et ont signé:

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire.. .. .. .. A. IMBERT.

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[English version.]

*Protocol No.* 6.—*Meeting of Friday, April* 7, 1893.

THE Tribunal assembled at 11·40 A.M., all the Arbitrators being present.

*The Honourable E. J. Phelps* called the attention of the Tribunal to certain errors in the shorthand notes.

*The President* stated that the only official Minutes which were specially under the authority of the Tribunal were the Protocols; the responsibility of the shorthand notes rested exclusively with the Agents of the two Governments.

*Mr. James C. Carter* then continued his argument on behalf of the United States.

At 1·30 the Tribunal adjourned for a short time.

On reassembling, *Mr. Carter* continued and concluded his argument.

The Counsel on both sides then exchanged, with the sanction of the President, some supplementary explanations on points relevant to the arguments which had previously taken place.

*The Honourable E. J. Phelps* having afterwards applied to have the second motion considered, the Tribunal declared that it would announce its intentions on this subject at the next meeting.

At 3·50 P.M. the Tribunal adjourned to Tuesday for a private meeting, the public meeting being postponed to Wednesday, the 12th April, 1893.

Done at Paris, the 7th April, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States.. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME, }

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## Inclosure 2 in No. 46.

### *Protocole No. 7.—Séance du Mercredi,* 12 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

*Le Président* donne lecture d'une décision du Tribunal ayant trait au "Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring," Rapport daté du 31 Janvier, 1893, et dont l'admissibilité a fait l'objet de la discussion qui a occupé les précédentes séances.

Les termes de cette décision sont les suivants:—

"Le Tribunal décide de ne pas recevoir, quant à présent, le document intitulé: 'Rapport Supplémentaire des Commissaires de la Grande-Bretagne dans la Mer de Behring,' daté du 31 Janvier, 1893, et signé de George Baden-Powell et George M. Dawson, lequel a été remis aux Arbitres individuellement par l'Agent de la Grande-Bretagne, le 25 Mars, 1893, et contient une critique des moyens de preuve produits dans les pièces et documents précédemment remis aux Arbitres, ou une argumentation portant sur lesdits moyens de preuve.

"Toute liberté demeure néanmoins réservée aux représentants de la partie intéressée de s'approprier ledit document, daté du 31 Janvier, 1893, pour l'incorporer à leurs plaidoiries, s'ils le jugent convenable.

"La question de l'admissibilité des pièces ou de quelques-unes d'entre elles formant annexes audit document du 31 Janvier, 1893, est réservée à un examen ultérieur, sans préjudice du droit pour les représentants des deux parties de discuter la question dont s'agit, ainsi que le contenu desdites annexes, au cours de leurs plaidoiries."

*Le Président* donne ensuite lecture d'une deuxième décision du Tribunal. Cette décision, qui se rapporte à la demande présentée par l'Honorable E. J. Phelps, à la fin de la précédente séance, relativement à l'examen de la seconde motion des Etats-Unis, est conçue en ces termes:—

"Le Tribunal décide qu'il différera, jusqu'à tel moment qui sera par lui ultérieurement indiqué, d'entendre plaider et de prendre en considération la motion présentée, le 4 Avril, 1893, par les États-Unis d'Amérique, tendant à la radiation de certains passages faisant partie du Contre-Mémoire et des moyens de preuve du Gouvernement de la Grande-Bretagne."

*Le Président* exprime le désir du Tribunal de ne pas s'attarder à des discussions de procédure et d'aborder le plus promptement possible le fond de la question.

Il invite, en conséquence, les Conseils à entrer immédiatement en matière.

*Sir Charles Russell* fait connaître l'ordre dans lequel il a été convenu que les Conseils présenteraient leur argumentation et ses indications sont confirmées par Mr. James C. Carter.

*Le Président* déclare que le Tribunal agréera la manière de procéder arrêtée entre les Conseils, mais il demande à ceux-ci de vouloir bien, autant que possible, dans leur argumentation, traiter séparément la discussion des points de droit et celle des Ruements éventuels à intervenir.

*Mr. James C. Carter,* après avoir remercié la France de son accueil hospitalier, commence son plaidoyer pour les États-Unis.

Le Tribunal suspend sa séance à 1 heure 30.

A la reprise, *Mr. James C. Carter* continue son exposé.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 12 Avril, 1893, et ont signé :

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

*Protocol No. 7.—Meeting of Wednesday, April* 12, 1893.

THE Tribunal assembled at 11·40 A.M., all the Arbitrators being present.

*The President* then read the decision of the Tribunal with reference to the "Supplementary Report of the British Behring Sea Commissioners," dated the 31st January, 1893, the admissibility of which was the subject of the debates which took place at the previous meetings.

The terms of the decision are as follows :—

"It is ordered that the document entitled a 'Supplementary Report of the British Behring Sea Commissioners,' dated the 31st January, 1893, and signed by George Baden-Powell and George M. Dawson, and delivered to the individual Arbitrators by the Agent of Her Britannic Majesty on the 25th day of March, 1893, and which contains a criticism of, or argument upon, the evidence in the documents and papers previously delivered to the Arbitrators, be not now received, with liberty, however, reserved to Counsel to adopt such document, dated the 31st January, 1893, as part of their oral argument, if they deem proper.

"The question as to the admissibility of the documents, or any of them, constituting the Appendices attached to said document of the 31st January, 1893, is reserved for further consideration, without prejudice to the right of Counsel on either side to discuss that question, or the contents of the Appendices, in the course of the oral argument."

*The President* then read a second decision of the Tribunal. This decision which relates to the application of the Honourable E. J. Phelps, presented at the close of the preceding meeting, and having reference to the consideration of the second motion of the United States, is worded in these terms :—

"It is ordered that the Argument and consideration of the motion made by the United States of America on the 4th April, 1893, to strike out certain parts of the Counter-Case and proofs of the Government of Great Britain, be postponed until such time as may be hereafter indicated by the Tribunal."

*The President* then expressed the desire of the Tribunal not to spend time in discussions on procedure, but to enter as soon as possible upon the main question.

He accordingly invited the Counsel to address themselves immediately to the matter at issue.

*Sir Charles Russell* indicated the order in which it had been agreed the Counsel would present their arguments, and his statement was confirmed by Mr. James C. Carter.

*The President* declared that the Tribunal would approve of the mode of proceeding agreed upon by the Counsel, but he requested them to be kind enough, as far as possible, in the arrangement of their arguments, to keep separate the discussion on the matters relating to right, and those relating to the Regulations which might eventually be proposed.

*Mr. James C. Carter*, after thanking France for her hospitable reception, began his argument in behalf of the United States.

At 1·30 the Tribunal adjourned for a short time.

On reassembling *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30

Done at Paris, the 12th April, 1893, and signed :

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME,

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## Inclosure 3 in No. 46.

### *Protocole No.* 8.—*Séance du Jeudi,* 13 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Mr. James C. Carter* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 13 Avril, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 8.—*Meeting of Thursday, April,* 13, 1893.

THE Tribunal assembled at 11·40 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1·30 the Tribunal adjourned for a short time.

On reassembling, *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 13th April, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States.. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 4 in No. 46.

### *Protocole No.* 9.—*Séance du Vendredi,* 14 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 40, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend son argumentation.

Le Tribunal suspend sa séance à 1 heure.

A la reprise, *Mr. James C. Carter* continue sa plaidoirie.

La séance est levée à 4 heures et le Tribunal s'ajourne au Mardi, 18 Avril, à 11 heures 30.

Ainsi fait à Paris, le 14 Avril, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretange .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 9.—*Meeting of Friday, April* 14, 1893.

THE Tribunal assembled at 11·40 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1 o'clock the Tribunal adjourned for a short time.

On reassembling, *Mr. James C. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to Tuesday, the 18th April, at 11·30 A.M.

Done at Paris, the 14th April, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## No. 47.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord, *Paris, May* 8, 1893.

I HAVE the honour to transmit herewith to your Lordship copies of the Report for 1890,* on the condition of the fur-seal fisheries on the Pribyloff Islands, by Mr. Henry W. Elliott.

Your Lordship will remember that this Report was produced by the United States' Government on the application made by the British Counsel at the meeting of the Tribunal on the 23rd March. The conditions under which it was presented by the United States are set out on pp. 36 and 37, Part I, of the shorthand notes.

The document was furnished in the form of a type-written copy, and some delay has necessarily taken place in having it printed.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 48.

*Mr. Tupper to the Earl of Rosebery.—(Received May 9.)*

My Lord, *Paris, May* 8, 1893.

ON the 5th instant, Mr. Coudert continued his observations on the causes of the decrease in the number of seals resorting to the Pribyloff Islands, urging that the facts conclusively proved this decrease to be due to pelagic sealing, and that it was in no way attributable to the method of taking the seals on the breeding islands.

Mr. Coudert expects to finish his argument at the next meeting of the Tribunal.

I have, &c.
(Signed) CHARLES TUPPER.

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## No. 49.

*Mr. Tupper to the Earl of Rosebery.—(Received May 12.)*

My Lord, *Paris, May* 10, 1893.

AT the meeting of yesterday, Mr. Coudert continued his argument against pelagic sealing, and, after a short reference to the question of damages, concluded his speech shortly before the hour of adjournment.

Sir Charles Russell will open the argument on behalf of Great Britain at the meeting of to-day.

I have, &c.
(In the absence of Mr. Tupper),
(Signed) R. P. MAXWELL.

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* Copies of this Report will be deposited in the Library of each House of Parliament.

## No. 50.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 12.)

My Lord, *Paris, May* 11, 1893.

AT the meeting of yesterday, the Attorney-General opened the argument for Great Britain with a summary of the position taken up by Her Majesty's Government.

He called attention to the various changes of front on the part of the United States which had taken place since the beginning of the diplomatic correspondence and to the novel propositions of law propounded by the United States' Counsel.

Sir Charles then proceeded to deal generally with the arguments in the speeches of Mr. Carter and Mr. Coudert, more especially with the attacks made upon the British Commissioners and upon pelagic sealing.

He had not concluded his preliminary statement when the Tribunal rose.

Sir Charles' opening speech was listened to with great interest by the largest audience of the public which has been present since the commencement of the sittings.

I have, &c.

(Signed) CHARLES H. TUPPER.

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## No. 51.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 12.)

My Lord, *Paris, May* 11, 1893.

I HAVE the honour to transmit to your Lordship, herewith, copies of the official Protocols of the Behring Sea Arbitration Tribunal, Nos. 10, 11, 12, 13, and 14.

I have, &c.

(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 51.

*Protocole No.* 10.—*Séance du Mardi,* 18 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Le Président,* à l'ouverture de la séance, se référant à quelques paroles qu'il avait prononcées à la fin de la séance précédente, déclare que si, dans le cours des plaidoiries, les Arbitres sont amenés à présenter des observations ou à adresser des questions aux Conseils, ces observations ou ces questions ne doivent pas être considérées comme exprimant une opinion de la part de l'Arbitre qui les formule, et encore moins comme engageant le pays auquel il appartient. Elles sont simplement, pour le Tribunal, un moyen d'obtenir, des représentants des parties, un éclaircissement plus complet des points en discussion.

Sur l'invitation du Président, *Mr. James C. Carter* continue alors son plaidoyer.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* reprend son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 18 Avril, 1893, et ont signé :

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire.. .. .. .. A. IMBERT.

[English version.]

### *Protocol No.* 10.—*Meeting of Tuesday, April* 18, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The President*, at the opening of the meeting, referring to a few remarks which he had made at the end of the preceding sitting, announced that, if in the course of the arguments, the Arbitrators were lead to make observations or to address questions to Counsel, these observations or questions must not be considered as expressing any opinion on the part of the Arbitrator who makes them, and still less as binding the country to which he belongs. They are simply, so far as the Tribunal is concerned, the means of obtaining from the representatives of the parties a more complete elucidation of the points under discussion.

Upon the invitation of the President, *Mr. James C. Carter* then continued his argument.

At 1·30 P.M. the Tribunal took a recess.

On the reassembling of the Tribunal, *Mr. Carter* resumed his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 18th April, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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Inclosure 2 in No. 51.

### *Protocole No.* 11.—*Séance du Mercredi*, 19 *Avril*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend son argumentation.

La séance est suspendue à 1 heures 30.

A la reprise, *Mr. Carter* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 19 Avril, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 11.—*Meeting of Wednesday, April* 19, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1·30 the Tribunal took a recess.

On the reassembling, *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned till the next day, at 11·30 A.M.

Done at Paris, the 19th April, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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## Inclosure 3 in No. 51.

### *Protocole No.* 12.—*Séance du Jeudi*, 20 *Avril*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'Agent des États-Unis fait remettre au Tribunal un recueil de "Citations empruntées à des ouvrages de Jurisconsultes et d'Économistes comme Appendices à l'Argument des États-Unis."

*Mr. James C. Carter* reprend son argumentation de la veille.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* continue son plaidoyer.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 20 Avril, 1893, et ont signé :

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 12.—*Meeting of Thursday, April* 20, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

The Agent for the United States caused to be delivered to the Tribunal a collection of "Citations from the writings of Jurists and Economists as an Appendix to the Argument of the United States."

*Mr. James C. Carter* resumed his argument of the preceding day.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 20th April, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME,

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## Inclosure 4 in No. 51.

### *Protocole No.* 13.—*Séance du Vendredi*, 21 *Avril*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend sa plaidoirie.

A 1 heure 30 la séance est suspendue.

A la reprise *Mr. Carter* continue son argumentation.

La séance est levée à 4 heures.

Le Tribunal s'ajourne au Mardi, 25 Avril, à 11 heures 30.

Ainsi fait à Paris, le 21 Avril, 1893, et ont signé :

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

### [English version.]

### *Protocol No.* 13.—*Meeting of Friday, April* 21, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Carter* continued his argument.

At 4 P.M. the Tribunal adjourned till Tuesday, the 25th April, at 11·30 A.M.

Done at Paris, the 21st April, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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### Inclosure 5 in No. 51.

### *Protocole No.* 14.—*Séance du Mardi,* 25 *Avril,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents, à l'exception de Lord Hannen, retenu chez lui pour cause de maladie.

*Sir Richard Webster* se lève pour déclarer que toute décision du Tribunal en vue d'une suspension de ses travaux, pendant le temps nécessaire pour assurer le complet rétablissement de Lord Hannen, serait conforme aux désirs des Conseils du Gouvernement Britannique.

*L'Honorable E. J. Phelps* s'exprime dans le même sens, au nom des Conseils du Gouvernement des États-Unis.

*Le Président* fait alors connaître que le Tribunal a décidé de s'ajourner jusqu'au Mardi, 2 Mai, à 11 heures 30.

Ainsi fait à Paris, le 25 Avril, 1893, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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### [English version.]

### *Protocol No.* 14.—*Meeting of Tuesday, April* 25, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present with the exception of Lord Hannen, confined to his house by illness.

*Sir Richard Webster* rose and stated that any decision of the Tribunal as to a suspension of its labours during the time necessary to insure the complete recovery of Lord Hannen, would be in accordance with the wishes of the Counsel of the British Government.

*The Honourable E. J. Phelps* expressed himself to the same effect in the name of the Counsel of the Government of the United States.

*The President* then announced that the Tribunal had decided to adjourn until Tuesday, the 2nd May, at 11·30 A.M.

Done at Paris, the 25th April, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

## No. 52.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 17.)

My Lord, *Paris, May* 15, 1893.

ON the 11th instant the Attorney-General, after a further comment on the references made by the United States to the Report of the British Commissioners, discussed at some length the history of the seizures of British vessels in Behring Sea by the United States' Government, the grounds on which the vessels had been condemned, and the consequent liability of the United States in the event of the Arbitrators deciding that the seizures were not justifiable.

The Argument was continued on the following day, special reference being made to the Revised Statutes of the United States dealing with the territory of Alaska, and to the proceedings in the United States' District Court at Sitka in the case of the schooner "Thornton."

Sir Charles Russell went on to show that in the Case presented on behalf of the United States, great stress had been laid upon the jurisdiction over the waters of Behring Sea alleged to have been exercised by Russia for the protection of the seal fisheries, and that it was not until the delivery of the Counter-Case and Argument that this portion of the Case was declared to be of minor importance.

The Attorney-General further pointed out that now that the part of the United States' Case containing the erroneous translations of the Russian documents had been withdrawn no proof remained of any exercise of these rights of jurisdiction by Russia.

The Argument on this question had not concluded when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 53.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 26.)

My Lord, *Paris, May* 23, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 15 to 18 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 53.

*Protocole No.* 15.—*Séance du Mardi,* 2 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. James C. Carter* reprend et achève son argumentation sur les points de droit. Au moment où il passe à l'examen de la question des Règlements, Sir Charles Russell fait observer que les Conseils de la Grande-Bretagne sépareront absolument dans la discussion les questions de droit de celles qui concernent la réglementation.

*Le Président* rappelle que le Tribunal a décidé, sans préjuger aucune question de droit, de laisser aux Conseils des deux parties, qui se sont mis d'accord à ce sujet, liberté entière de disposer leurs plaidoiries de la façon qui leur convenait, tout en traitant autant que possible séparément les questions de droit et celle des Règlements, et prend acte de ce que les deux parties ont décidé de déférer à cette demande.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Carter* achève sa plaidoirie.

A 3 heures 30, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 2 Mai, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN. W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocole No.* 15.—*Meeting of Tuesday, May* 2, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. James C. Carter* resumed and concluded his argument on the matters relating to right. As he was proceeding to deal with the question of Regulations, *Sir Charles Russell* observed that the Counsel of Great Britain would in the discussion keep absolutely separate matters relating to right, and those relating to Regulations.

*The President* recalled the fact that the Tribunal had decided, without prejudging the question of right, to give to Counsel on each side, who had agreed upon this point, full liberty to arrange their arguments in such manner as they thought most convenient, but always, as far as possible, so as to keep the questions of right distinct from the Regulations, and added that the Tribunal took note that both parties had decided to defer to this desire.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Carter* finished his argument.

At 3·30 P.M. the Tribunal adjourned till the next day at 11·30 A.M.

Done at Paris, the 2nd May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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### Inclosure 2 in No. 53.

### *Protocole No.* 16.—*Séance du Mercredi,* 3 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable John W. Foster* annonce qu'il sera très prochainement en mesure de faire distribuer aux membres du Tribunal le compte rendu sténographique, revu et corrigé, de l'argumentation qu'a terminée la veille Mr. James C. Carter.

Sur l'invitation du Président, *Mr. Frederick R. Coudert* commence alors sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Coudert* continue son argumentation.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 3, Mai, 1893, et ont signé:

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocole No.* 16.—*Meeting of Wednesday, May* 3, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable John W. Foster* announced that in a very short time he expected to be able to deliver to the members of the Tribunal, a shorthand report revised and corrected, of Mr. James C. Carter's argument as concluded the previous day.

Upon the invitation of the President, *Mr. Frederick R. Coudert* then began his argument.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 3rd May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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## Inclosure 3 in No. 53.

### *Protocole No.* 17.—*Séance du Jeudi,* 4 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. Frederick R. Coudert* reprend sa plaidoirie de la veille.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Coudert* continue son argumentation.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 4 Mai, 1893, et ont signé:

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocole No.* 17.—*Meeting of Thursday, May* 4, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. Frederick R. Coudert* resumed his argument of the preceding day.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 4th May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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## Inclosure 4 in No. 53.

### *Protocole No.* 18.—*Séance du Vendredi,* 5 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. Frederick R. Coudert* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Mr. Coudert* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 9 Mai, à 11 heures 30.

Ainsi fait à Paris, le 5 Mai, 1893, et ont signé:

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

[English version.]

*Protocole No.* 18.—*Meeting of Friday, May* 5, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. Frederick R. Coudert* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling *Mr. Coudert* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 9th May, at 11·30 A.M.

Done at Paris, the 5th May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## No. 54.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 26.)

My Lord, *Paris, May* 24, 1893.

AT the meeting of yesterday, Sir Charles Russell continued his argument on the 5th question of Article VI of the Treaty.

He contended that this question might be interpreted as referring to an exclusive right to take fur-seals in Behring Sea, but assumed for the purpose of argument that the wider meaning attached to it by the United States was correct. This interpretation is, as your Lordship is aware, the assertion of a right of property in the seal-herd, and the sealing industry.

Sir Charles proceeded to reply generally to Mr. Carter's arguments on this head, and entered into the questions of the alleged domestic character of the seals, the intermingling of the so-called herds, the length of their stay on the islands, and the possibility of identification.

He then commenced an examination of the propositions of law put forward by Mr. Carter in this connection, and had not concluded this portion of his subject when the Tribunal rose.

I have, &c.

(Signed) CHARLES H. TUPPER.

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## No. 55.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 26.)

My Lord, *Paris, May* 25, 1893.

AT the meeting of yesterday, Sir Charles Russell proceeded with his examinations of the legal propositions put forward by Mr. Carter, and dealt with the various authorities cited in the printed Argument of the United States, which, he argued, entirely supported the British contention with regard to the question of property in the fur-seals.

He supplemented these authorities by citing those quoted in the British Counter-Case and Argument, and, after alluding to the French laws on the subject of property in animals, concluded his observations for the day with an explanation of the bearings of natural and moral law on the principles of international jurisprudence.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 56.

*Mr. Tupper to the Earl of Rosebery*—(*Received May* 27.)

My Lord, *Paris, May* 26, 1893.

AT the meeting of yesterday, Sir Charles Russell, after briefly supplementing his remarks of the preceding day, proceeded to a detailed examination of the printed argument by Mr. Phelps, which appears on pp. 130–179 of the Argument of the United States. Your Lordship will remember that the subject dealt with therein is the claim of the United States to an interest, an industry, and a commerce in the produce of the seal-herd and to a right of protecting the same, irrespective of any distinct right of property in the seals.

Sir Charles had not concluded his criticism on Mr. Phelps' argument when the Tribunal rose for the day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 57.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.) *Foreign Office, May* 29, 1893.

IN view of what has passed in the arguments before the Tribunal respecting the effect of the *modus vivendi* of last year, I think it must be left entirely to your discretion to decide, in consultation with Counsel, whether any claim for compensation under Article V of the Treaty of the 18th April, 1892, shall be pressed on behalf of Her Majesty's Government.

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## No. 58.

*Mr. Tupper to the Earl of Rosebery.*—(*Received May* 31.)

My Lord, *Paris, May* 30, 1893.

AT the meeting of the Tribunal on the 26th instant, Sir Charles Russell continued his examination of the illustrations and cases cited by Mr. Phelps in the printed Argument of the United States, and was dealing with the analogies sought to be drawn from legislation in British Colonies and various foreign countries in regard to seal fisheries, when the Tribunal adjourned for the day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 59.

*The Earl of Rosebery to Mr. Tupper.*

(Telegraphic.) *Foreign Office, May* 31, 1893.

YOU may authorize Counsel to state to the Tribunal that an arrangement has been concluded with the Russian Government for the prohibition of sealing within a zone of 10 miles from the Russian coasts in Behring Sea and other parts of the North Pacific Ocean, and of 30 miles round the Commander Islands and Robben Island; this arrangement to be a provisional one for the present year, and without prejudice to the rights or position of either Power. The correspondence will be laid before Parliament forthwith. It may also be stated that, although no official reply has been received on the subject of the seizures made by Russian cruizers last year, it is understood that these are justified on the ground that the vessels were seized for acts just committed in Russian territorial waters.

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## No. 60.

### *Foreign Office to Colonial Office.*

Sir, *Foreign Office, May* 31, 1893.

I AM directed by the Earl of Rosebery to forward, for the information of the Marquis of Ripon, a paraphrase of a telegram* which has been addressed to the British Agent for the Behring Sea Arbitration in regard to the possible claim of Her Majesty's Government for compensation under Article V of the Treaty of Washington of the 18th April, 1892.

That Article provides that if the decision of the Arbitrators should affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, then compensation should be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the Arbitration upon the basis of such a regulated and limited catch or catches as, in the opinion of the Arbitrators, might have been taken without an undue limitation of the seal herds. Further, the amount awarded, if any, shall be such as under all the circumstances is just and equitable.

As a matter of fact, however, it has been found that while the United States, under the *modus vivendi* of last year, were restricted to a catch of 7,500, the pelagic catch, although the sealing vessels kept outside the prohibited limits, was larger than in previous years. This fact has been strongly brought forward by the United States' Counsel before the Tribunal.

It is not probable that, under such circumstances, the Arbitrators would consider that the British sealers were, under any circumstances, entitled to compensation for a loss of catch during 1892, and it is possible that the British Case might be prejudiced by the claim being urged.

This view of the case was represented by Sir R. Webster, who was in England for two days on the 29th and 30th instant, and Lord Rosebery thought it was better at once to inform Mr. Tupper that the question whether the claim should be advanced must be left to his discretion in consultation with the British Counsel.

His Lordship has no doubt that Lord Ripon will concur in that view.

I am, &c.
(Signed) T. H. SANDERSON.

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## No. 61.

### *Mr. Tupper to the Earl of Rosebery.—(Received June* 1.)

My Lord, *Paris, May* 31, 1893.

AT the meeting of yesterday, Sir Charles Russell proceeded with his examination of the analogies sought to be drawn by the United States from colonial and foreign regulations in regard to seal fisheries. He then dealt with the United States' contentions that not only seal fisheries but also other fisheries, more especially those of pearl, coral, and herring, are protected by extra-territorial laws of other nations. He passed on to the consideration of the St. Helena Act, and certain cases quoted by the United States bearing on extra-territorial jurisdiction, and had just concluded this portion of his argument when the Tribunal adjourned. Sir Charles expects to finish his speech this morning.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 62.

### *Mr. Tupper to the Earl of Rosebery.—(Received June* 2.)

My Lord, *Paris, June* 1, 1893.

AT the meeting of yesterday, Sir Charles Russell, having concluded his examination of the various authorities cited by the United States, proceeded to sum up the various points in his argument, and to lay before the Tribunal the findings which he asked for in regard to the questions of fact involved in the claim for damages put forward in the British Case.

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* No. 57.

He stated that Great Britain would not ask from the Tribunal any finding for damages under Article 5 of the *modus vivendi* of 1892, and Mr. Phelps admitted that the United States had on their side abandoned any claims under this head.

Sir Charles then re-stated to the Tribunal the replies which Great Britain contends should be given to the five questions of Article VI of the Treaty, as set forth at pp. 26 and 63 of the British Argument, and after explaining that his argument had been only directed to the question of legal right, as distinct from regulations, concluded his speech with an eloquent appeal to the Tribunal for an award in conformity with the principles of law which would be a victory for peace.

Sir Charles, whose concluding words were listened to with deep interest by a large audience, was thanked by the President for the vigour and incisiveness of his argument.

Sir Richard Webster then opened his speech, and addressed himself to an examination of the first four questions of Article VI of the Treaty, which he had not concluded when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 63.

*Mr. Tupper to the Earl of Rosebery.—(Received June 3.)*

My Lord, *Paris, June* 2, 1893.

AT the meeting of yesterday, Sir Richard Webster continued his argument with regard to the first four questions under Article VI of the Treaty, and discussed the interpretation of the expressions "North-west Coast of America" and "Pacific Ocean," as illustrating the Treaties of 1824 and 1825 between Russia and the United States and Russia and Great Britain respectively.

Sir Richard had substantially concluded this part of his argument when the Tribunal adjourned for the day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 64.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord, *Paris, June* 3, 1893.

WITH reference to my despatch of the 18th April, I have the honour to transmit to your Lordship copies of further correspondence which I have had with General Foster respecting the shorthand notes of the proceedings before the Tribunal of Arbitration.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 64.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster, *Paris, May* 16, 1893.

HAVING reference to your recent request for copies of the daily report of Sir Charles Russell's argument, as well as of the revised proof of it, when ready, it occurs to me that the experience gained by us both since the date of our correspondence on the subject of the shorthand notes, may enable us to resume the arrangement originally contemplated, whereby the expense of the work would fall equally upon the United States and Great Britain. If this is possible, I shall of course be happy to supply you with complete copies of all the shorthand notes, and will see that they are regularly supplied in future.

I laid upon your desk to-day three copies of the printed Report of Mr. Elliott. Mr. Stanley-Brown has also asked for and received a copy, and Mr. Williams, one of the Counsel for the United States, has expressed a desire for further copies.

I take it that the printing in the case of Mr. Elliott's Report may be fairly considered a joint charge, and if you agree I shall be glad to supply you with copies equal in number to those received by us.

You were good enough to supply us with copies of Mr. Carter's argument as revised by him.

Of course, if we recur to the shorthanding as a joint charge, we shall be happy to bear half of the expense of the taking and printing of Mr. Carter's argument.

If, however, you do not feel inclined to bear half of the cost of the printing with us, I will send you copies of the Report of Sir Charles Russell's argument when revised.

Yours, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 2 in No. 64.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper, *Paris, May* 17, 1893.

ACKNOWLEDGING the receipt of your letter of the 16th instant, I beg to remind you that you have misapprehended the purport of my conversation to which you refer. Its object was to ascertain what further number of copies of Mr. Carter's argument you desired, and I incidentally inquired whether you would deliver to us Sir Charles Russell's argument by means of the daily reports or in the revised form. I expressly disavowed making any request on the subject.

I regret to have to say, in response to your suggestion, that the events since our last correspondence on the subject have not lead to any change of view on the part of the Representatives of the United States as to the practicability of the daily shorthand reports. Our Counsel regard them in the manner reproduced in the morning after each session, so far as they are concerned, as entirely unsatisfactory, and as not serving any useful purpose.

I am sorry not to be able to concur in your proposition respecting the printing and distribution of the Elliott Report. The United States does not propose to make it evidence in its behalf. It has been printed by the British Government without the knowledge or approval of the Representatives of the United States. If it is introduced as evidence by the British Government, and thereby made a part of its Case, it would seem to be a fair claim on the part of the United States to be supplied with the same number of copies of it as have been heretofore furnished of the other printed documentary evidence accompanying the Case and Counter-Case of Great Britain.

I hold myself ready to furnish you with such additional number of copies of Mr. Carter's argument as you may desire.

I am, &c.
(Signed) JOHN W. FOSTER.

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## No. 65.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord, *Paris, June* 3, 1893.

I HAVE the honour to inclose, for your Lordship's information, copies of a letter which, with the approval of Counsel, I addressed to Mr. Foster, and of his reply with regard to the question of the ownership of sealing vessels engaged in the Behring Sea fishery

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 65.

*Mr. Tupper to Mr. Foster.*

Dear Mr. Foster, *Paris, May* 26, 1893.

REFERRING to the suggestion advanced on p. 130 of the United States' Counter-Case that some of the vessels for the seizure of which damages are claimed by Her Majesty's Government, were owned by citizens of the United States, and to the promise made to the Tribunal by the Attorney-General on the 11th May, that, if possible, the Arbitrators should not be troubled with the consideration of the subject, I now write to inquire whether we can agree upon the facts in dispute in order that the Attorney-General's suggestion should be made effective.

As regards Mr. Franks, I have not as yet complete evidence.

As regards Mr. Boscowitz, this gentleman denies that he is the owner of the vessels, and further denies that he is an American citizen. And as at present advised, I shall have to ask the Tribunal so to hold, unless of course it is possible, as I hope it may be, for me to come to an arrangement with you upon this matter.

Your suggestion being first made in your Counter-Case, it was not possible to produce in Court evidence on the point in the ordinary way, but Mr. Boscowitz happens at the present moment to be in Paris, and I would suggest that a fair way of eliciting the actual facts would be, that we should examine, and that you should cross-examine, Mr Boscowitz in the presence of a shorthand writer. His evidence might then be laid before the Arbitrators as material for a decision if this should be thought necessary by either side.

I am, &c.
(Signed) CHARLES H. TUPPER.

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Inclosure 2 in No. 65.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper, *Paris, May* 27, 1893.

I HAVE the honour to acknowledge the receipt of your communication of the 26th instant, in which you inform me that a Mr. Boscowitz "happens at the present moment to be in Paris," and, in view of certain proofs adduced in behalf of the United States respecting him, you suggest that he be examined and cross-examined here for the purpose of submitting his evidence to the Arbitrators as material for a decision on their part.

An examination of the Treaty under which the pending Arbitration is constituted must satisfy you that I have no power or authortty to accede to your request. The manner in which evidence is to be submitted to the Arbitrators is precisely fixed by the terms of the Treaty, and no opportunity or method for such submission is therein afforded to either party except through its respective Case and Counter-Case.

Besides, it would hardly seem reasonable to allow one party, after the Case, Counter-Case, and printed Argument had been submitted and while the oral argument was in progress and near its close, to examine an important witness on its behalf, when the witnesses of the other party, whose testimony might be material to refute his statements, were 6,000 miles away, and who could not be reached in time to submit their testimony to the Tribunal.

Referring to your inquiry as to whether we can agree upon the facts in dispute in order that the suggestion of Sir Charles Russell might be made effective, I have pleasure in saying that I am prepared to concur with you in any statement of facts proper to be considered by the Tribunal and warranted by the evidence now legitimately before that Body.

In closing I beg to remind you that the suggestion ". . . . that some of the vessels for the seizure of which damages were claimed by Her Majesty's Government were owned by citizens of the United States," was not for the first time advanced by the United States in the Counter-Case, as will be seen by reference to the Case of the United States, Appendix, vol. II, p. 505.

I am, &c.
(Signed) JOHN W. FOSTER.

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No. 66.

*Mr. Tupper to the Earl of Rosebery.—(Received June 5.)*

My Lord, *Paris, June* 3, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 19 to 23 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

### Inclosure 1 in No. 66.

### *Protocole No. 19.—Séance du Mardi, 9 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. Frederick R. Coudert* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Mr. Coudert* achève sa plaidoirie.

*L'Honorable Edward J Phelps* se lève pour annoncer au Tribunal, avant que les Conseils de la Grande-Bretagne commencent leur augumentation, que, dans sa réplique, il s'appuiera sur toutes les citations et propositions contenues dans l'Argument des États-Unis, de la page 130 à la page 190.

*Le Président* donne acte à l'Honorable Edward J Phelps de cette déclaration.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 9 Mai, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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### [English Version.]

### *Protocol No. 19.—Meeting of Tuesday, May 9, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. Frederick R. Coudert* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Mr. Coudert* concluded his argument.

*The Honourable Edward J. Phelps* rose to inform the Tribunal, before the Counsel of Great Britain commenced their argument, that in his reply he would rely upon all the authorities and points referred to between pages 130 and 190 of the printed Argument of the United States.

*The President* said that the Tribunal would take note of the Honourable Edward J. Phelps' declaration.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 9th May, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME,

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### Inclosure 2 in No. 66.

### *Protocole No. 20.—Séance du Mercredi, 10 Mai, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

L'Agent des États-Unis fait distribuer aux membres du Tribunal le compte rendu sténographique, revu et corrigé, de l'argumentation de *Mr. James C. Carter.*

Sur l'invitation du Président, *Sir Charles Russell* commence sa plaidoirie pour la Grande-Bretagne.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 10 Mai, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis.. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

*Protocol No.* 20.—*Meeting of Wednesday, May* 10, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

The Agent of the United States caused to be delivered to the members of the Tribunal a shorthand report, revised and corrected, of *Mr. James C. Carter's* argument.

Upon the invitation of the President, *Sir Charles Russell* began his argument for Great Britain.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M., the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 10th May, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 3 in No. 66.

*Protocole No.* 21.—*Séance du Jeudi,* 11 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation et annonce qu'il présentera, à une date ultérieure, au nom du Gouvernement de la Grande-Bretagne, une liste des questions de fait sur lesquelles il demande au Tribunal de se prononcer, en exécution de l'Article VIII du Traité d'Arbitrage.

*Le Président* fait remarquer que le Tribunal réserve son appréciation de ces questions, tout en laissant à Sir Charles Russell pleine liberté de traiter le sujet de la manière qui lui conviendra.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 11 Mai, 1893, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

*Protocol No.* 21.—*Meeting of Thursday, May* 11, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell,* in continuing his argument, announced that on a future day he would submit on the part of Great Britain a list of the findings of facts, which the Tribunal was requested to make under Article VIII of the Treaty of Arbitration.

*The President* remarked that these questions would be considered by the Tribunal with full liberty for Sir Charles Russell to deal with the matter as he thought proper.

At 1·30 the Tribunal took a recess.

On reassembling *Sir Charles Russell* continued his argument.

The Tribunal adjourned at 4 P.M. till 11·30 the next day.

Done at Paris, the 11th May, 1893, and signed :

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate :
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 4 in No. 66.

### *Protocole No.* 22.—*Séance du Vendredi*, 12 *Mai*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 16 Mai, à 11 heures 30.

Ainsi fait à Paris, le 12 Mai, 1893, et ont signé :

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 22.—*Meeting of Friday, May* 12, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 16th May, at 11·30 A.M.

Done at Paris, the 12th May, 1893, and signed :

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate :
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 5 in No. 66.

### *Proctocole No.* 23.—*Séance du Mardi*, 16 *Mai*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 16 Mai, 1893, et ont signé:

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

*Protocol No. 23.—Meeting of Tuesday, May 16, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned till 11·30 A.M. the next day.

Done at Paris, the 16th May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## No. 67.

*Mr. Tupper to the Earl of Rosebery.—(Received June 8.)*

My Lord, *Paris, June* 6, 1893.

AT the meeting of the Tribunal held on the 2nd instant, Sir R. Webster, after referring to the question of the limits of territorial waters, went on to show how little value had been attached to the fur-seal fisheries at the time of the purchase of Alaska by the United States.

He was proceeding with the discussion of the 5th question of Article VI of the Treaty, when Mr. Justice Harlan stated that, before this portion of the argument was commenced, he would be glad to see the draft "Projet" which Mr. George Canning inclosed in his letter to Mr. Stratford Canning of the 8th December, 1824. This document, as your Lordship will remember, was not included among the correspondence printed in Volume II of the Appendix to the British Case, for the reason that no trace of it could be discovered, and a statement to this effect was made to the Tribunal by Sir R. Webster.

Sir Richard then reviewed at some length the various contentions by which the Government of the United States have endeavoured to establish their claim to property or a property interest in the fur-seals frequenting the Pribyloff Islands.

He had not concluded his remarks on this subject when the Tribunal adjourned until this morning.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 68.

*Mr. Tupper to the Earl of Rosebery.—(Received June 8.)*

My Lord, *Paris, June* 7, 1893.

AT yesterday's meeting of the Tribunal, M. Gram opened the sitting with a statement as to the special rules concerning territorial waters which were necessitated by the natural conditions of Sweden and Norway.

He explained that the fiords of those countries had been from time immemorial considered as "inner waters," and that this principle had been always maintained even as against foreign subjects. The 3-mile limit had never been recognized by either country, nor had they concluded or acceded to any Treaty consecrating that rule.

At the conclusion of M. Gram's remarks the President, while begging both parties to bear in mind the explanation they had just heard, wished to state very distinctly that the question of the definition of territorial waters was not before the Tribunal.

Sir Richard Webster then continued his argument on the question of property in the seals and the sealing industry, and criticized in detail the positions maintained by the United States' Counsel.

In the course of some observations directed to prove the intermingling of the seals in Behring Sea, Sir Richard read a passage from the Supplementary Report of the British Commissioners. This drew forth a protest from Mr. Phelps as to the use which was being made of the document quoted, and after some discussion (reported on pp. 1366-71 of the shorthand notes), it was arranged that the matter should be referred to at a later stage, when the question of Regulations was argued.

I beg to call your Lordship's special attention to a statement made by Mr. Phelps (as reported at p. 1402 of the notes) in the course of a discussion in regard to Prize Courts initiated by Senator Morgan. Mr. Phelps' words were as follows:—

"I conceive that no question whatever in regard to the validity of the seizures, and no question whatever in respect of the right of the United States to seize any vessel hereafter, is submitted under this Treaty to the Tribunal so far as I am concerned."

If this statement accurately represents the position of the United States, it is difficult to understand how it can be reconciled with the circumstances which led to this Arbitration.

Sir Richard Webster had not concluded his argument at the close of the day's proceedings.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 69.

*Mr. Tupper to the Earl of Rosebery.—(Received June 9.)*

My Lord, *Paris, June* 8, 1893.

AT the meeting of the Tribunal yesterday, Sir Richard Webster continued his argument, and commenced by referring to the remark made by Mr. Phelps, to which I called your Lordship's attention in my immediately preceding despatch, asserting that no question in respect to the validity of British vessels was submitted to the Tribunal.

After showing that the attitude thus assumed by Mr. Phelps was inconsistent with the suggestions made in the Case and Counter-Case of the United States respecting the proposed findings of the Tribunal, Sir Richard passed on to his main argument, which he shortly afterwards concluded with some telling references to the rights of all nations to participate in ocean fisheries.

On the conclusion of his speech, Sir Richard Webster was complimented by the President on the substantial and useful observations with which he had supplemented the argument of the Attorney-General. Baron de Courcel added an expression of his admiration for the manner in which the Attorney-General of yesterday and to-day had worked together, and remarked on the enviable condition of a country where party spirit admitted of such brotherly association when the national interest was at stake.

Mr. Robinson followed Sir Richard Webster. He dealt generally with the various questions of right which are at issue, and, after referring to the interpretation to be placed upon the terms "Pacific Ocean" and "North-West Coast," touched on the alleged domestic nature of the seals, and the claims founded by the United States on this contention. He concluded the proceedings for the day with an able and humorous criticism on the assumption by the United States of the position of Trustees of the industry.

Mr. Robinson expects to conclude his speech to-day.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 70.

*Mr. Tupper to the Earl of Rosebery.—(Received June* 10.)

My Lord, *Paris, June* 9, 1893.

AT the meeting of yesterday, Mr. Robinson continued his argument on the property claim alleged by the United States, and while contending that the cruelty of the methods had no bearing on the question of right, he briefly discussed the charges of this nature preferred against pelagic sealers. He quoted from the Report of Mr. Palmer, to show that whatever barbarity there might be in the methods of killing seals at sea, the manner in which the seals were driven and killed upon the islands was more barbarous than pelagic sealing.

At the close of Mr. Robinson's argument, Mr. Foster laid before the Tribunal a statement of the regulations which the Government of the United States submitted were necessary in the event of the questions described in Article VI of the Treaty being decided in such a manner that the concurrence of Great Britain should be necessary to the establishment of such regulations.

This statement appears at pp. 1476 and 1477 of the shorthand notes, and, as your Lordship will observe, it amounts to a demand by the United States for the total suppression of pelagic sealing in the North Pacific Ocean.

In the afternoon, the Attorney-General addressed the Tribunal on the principles which, in his opinion, should be borne in mind by the Tribunal when approaching the question of regulations.

He first dealt with the area over which the jurisdiction of the Tribunal extended. From the general language of the Treaty, he argued, that while it might be said that their jurisdiction extended to all the resorts of the fur-seal outside the territorial limits of either Power, from the diplomatic correspondence previous to the Treaty of Arbitration, it clearly appeared that all that was in the mind of the framers of that Treaty as the area in dispute was the eastern portion of Behring Sea.

Sir Charles Russell next proceeded to show that pelagic sealing had, at the worst, played but a secondary part in the diminution of the seal herd, and he was discussing this question when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 71.

*Mr. Tupper to the Earl of Rosebery.—(Received June* 14.)

My Lord, *Paris, June* 13, 1893.

AT the meeting of the 9th instant, Sir Charles Russell continued his argument to show that the decrease of the seals upon the Pribyloff Islands could not have been altogether due to pelagic sealing, but was mainly attributable to the methods employed on the breeding islands.

Sir Charles Russell then discussed the relative value of the sealing industries at sea and on the islands, the common interest in sealing, and the other considerations to which he claimed attention should be given in framing Regulations for the proper protection and preservation of the fur-seal.

The Attorney-General deferred to the next meeting of the Tribunal a consideration of the actual Regulations proposed by the Governments of Great Britain and the United States respectively.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 72.

*Mr. Tupper to the Earl of Rosebery.—(Received June 15.)*

My Lord, *Paris, June* 14, 1893.

AT yesterday's meeting, the Attorney-General continued his argument on the question of Regulations. He criticized in strong terms the proposal put forward by the United States, as reported on p. 1476 of the shorthand notes, for a total suppression of pelagic sealing from Behring Strait down to the 35th parallel of north latitude, east of the 180th meridian. He characterized this proposal as involving a wider, more reckless, and more unfounded assertion of jurisdiction than the Russian claims under the Ukases of 1799 and 1821.

He then explained the nature of the Regulations suggested by Great Britain, which are founded upon those put forward in the Report of the British Commissioners.

Sir Charles proceeded to refer to the recent agreement with Russia for a *modus vivendi* in regard to the seal fisheries. He asserted that on the part of Russia there had been no claim to property in the seals or the sealing industry, that a zone of 30 miles was considered sufficient for the protection of female seals, and that no seizures were asserted to be lawful but those of vessels whose boats had been fishing in territorial waters.

Some discussion arose as to the propriety of the reference to this subject, in regard to which I beg to call your Lordship's attention to pp. 1566–1570 and 1571–1585 of the shorthand notes.

The Attorney-General concluded his speech just before the midday adjournment, and was followed by Sir R. Webster when the Tribunal reassembled. Having referred to the question of the agreement with Russia, Sir Richard passed on to a consideration of the area over which the Regulations should extend, maintaining that it should be confined to Behring Sea.

He had just explained the arrangement he intended to follow in his detailed argument on seal life when the hour of adjournment arrived.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 73.

*Mr. Tupper to the Earl of Rosebery.—(Received June 16.)*

My Lord, *Paris, June* 15, 1893.

AT yesterday's meeting of the Tribunal, Sir Richard Webster proceeded with his examination of the evidence on the various points enumerated by him at the close of his speech on the previous day, with the object of justifying the Regulations proposed by Great Britain.

In the course of his argument Sir Richard alluded to Mr. Elliott's Report, and was proceeding to read an extract from an official United States' publication, to show the confidence reposed in him at the time of his selection as United States' Agent in 1890, when the Counsel for the United States objected.

It was subsequently arranged between Counsel that no criticisms on Mr. Elliott should be made by either side other than could be gathered from the face of the Report itself.

Your Lordship will find an account of this incident at pp. 1622–24 of the shorthand notes.

Sir Richard Webster will continue his argument to-morrow.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 74.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 17.)

My Lord, *Paris, June* 16, 1893.

AT the meeting of the Tribunal yesterday, Sir Richard Webster continued his argument in support of the Regulations suggested by Great Britain, and examined in detail the evidence on both sides regarding various points connected with seal life.

Sir Richard expects to conclude his speech at the meeting of to-day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 75.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 19.)

My Lord, *Paris, June* 16, 1893.

AT the bottom of p. 343 of the Case presented on behalf of the United States, a quotation is made from a Report of Mr. Goff, who was Treasury Agent on the Pribyloff Islands in 1889.

The document from which this extract is taken is not included among the evidence presented by the United States, nor does it appear in the Report of Mr. Goff, which was produced by the Agent for the United States in compliance with the notice addressed to him by me on the 3rd October, 1892.

The Report of Mr. Goff produced refers to one of a Mr. Manchester. Desiring, if possible, to have all official Reports touching seal life before the Tribunal, I made a verbal request to the Agent for the United States for a copy of the documents in question.

A copy of the communication which I have received from Mr. Foster in reply is inclosed herewith, for your Lordship's information. It appears from this letter that Mr. Foster has no copy of the Reports in his possession in Paris, but that had this been the case, he was of opinion that, under the terms of the Treaty, he was not bound to comply with my request.

I do not think it will be deemed necessary for Counsel to call the attention of the Tribunal to this incident, but I may observe to your Lordship that the course adopted by the Agent for the United States does not indicate a desire on his part to lay before the Tribunal all the information respecting seal life which is in the possession of the United States' Government.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure in No. 75.

*Mr. Foster to Mr. Tupper.*

Dear Mr. Tupper, *Agency of the United States, Paris, June* 15, 1893.

REFERRING to your verbal request for copies of the Reports of Agents Manchester and Goff, I have to state that upon examination I find that we have already furnished you with the Goff Report cited in our Case (p. 153). The second reference in the Report of the United States' Commissioners (p. 343) appears to be another Report than the one furnished you.

In a search through the published Reports of the United States' Treasury Department in my possession, neither the Manchester nor second Goff Reports are found. It would therefore be necessary to apply to the Secretary of the Treasury for copies, should it be decided to accede to your request.

But, in consultation with the Counsel for my Government, it is not deemed proper by them that the terms of the Treaty as to evidence should be departed from at this late day in the proceedings, especially as neither of the Reports in question have been cited in either the Case or Counter-Case of the United States.

Very truly, &c.
(Signed) JOHN W. FOSTER.

## No. 76.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 21.)

My Lord, *Paris, June* 20, 1893.

AT the meeting of the Tribunal held on the 16th instant, Sir Richard Webster continued his speech on the subject of Regulations, and his argument was directed to prove that the recent decrease observed in seal life was due in a large measure to the insufficiency of breeding males on the Pribyloff Islands, brought about by the system of killing on land practised under the control of the United States.

Sir Richard was unable to conclude his speech before the hour of adjournment.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 77.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 22.)

My Lord, *Paris, June* 21, 1893.

SIR RICHARD WEBSTER, before the Tribunal yesterday, continued his argument with regard to the scarcity of male seals on the breeding-grounds, and dwelt upon the injurious effect of the system of driving, as practised on the islands.

He concluded by submitting to the Tribunal a draft Scheme of Regulations proposed by Great Britain.

I have the honour to inclose a separate copy of this document.

A discussion arose on these proposals, which will be found reported at pp. 1779-1796 of the shorthand notes.

At the conclusion of Sir Richard's speech I read to the Tribunal the document, of which a copy is inclosed, setting forth the findings of fact with regard to the seizures of British vessels, which both parties were prepared to agree to.

Your Lordship will remember that, as reported on p. 1209 of the notes of the proceedings of the 30th day, the Attorney-General submitted to the Tribunal a suggestion on the part of Great Britain as to what these findings of fact should be. An alternative proposal was subsequently put forward on behalf of the United States, as reported at p. 1477 of the proceedings of the 35th day.

A conference was shortly afterwards held between the Agent and Counsel of both parties, at which the terms of the findings to be suggested to the Tribunal were agreed upon.

At this conference, it was understood that there was no intention on the part of the United States to place obstacles in the way of further consideration of the amount of our claim for damages and the ownership of the vessels seized, and that while these subjects would not be pressed upon the Tribunal, our rights should not be in any way prejudiced.

A short discussion arose on this paper, which is reported at pp. 1799-1802 of the notes.

Mr. Robinson then continued the discussion on Regulations on behalf of Great Britain. He had not concluded his speech at the close of the day's proceedings.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 77.

*Regulations.*

ALL vessels engaging in pelagic sealing shall be required to obtain licences at one or other of the following ports:—Victoria, in the Province of British Columbia; Vancouver, in the Province of British Columbia; Port Townsend, in Washington Territory in the United States; San Francisco, in the State of California in the United States.

2. Such licences shall only be granted to sailing-vessels.

3. A zone of 20 miles around the Pribyloff Islands shall be established, within which no seal hunting shall be permitted at any time.

4. A close season from the 15th September until the 1st July shall be established, during which no pelagic sealing shall be permitted in Behring Sea.

5. No rifles or nets shall be used in pelagic sealing.

6. All sealing vessels shall be required to carry a distinguishing flag.

7. The masters in charge of sealing vessels shall keep accurate logs as to the times and places of sealing, the number and sex of the seals captured, and shall enter an abstract thereof in their official logs.

8. Licences shall be subject to forfeiture for breach of above Regulations.

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## Inclosure 2 in No. 77.

*Findings of Fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

THAT the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pp. 1 to 60, inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

2. That the seizures aforesaid, with the exception of the "Pathfinder," seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto, marked (C).

3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked (A), and that the others were, in all substantial respects, the same; that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B), and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea, at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released, the seizure was made by the authority of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea, at the distances aforesaid from the shore.

4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea, were made by public armed vessels of the United States, the commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3 above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized, as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

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## Annex (A).

(See British Counter-Case, Appendix, Vol. I, p. 72.)

*Treasury Department, Office of the Secretary,*
*Washington, April* 21, 1886.

Sir,

Referring to Department letter of this date, directing you to proceed with the revenue-steamer "Bear," under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the law contained in the provisions of Section 1,956 of the United States' Revised Statutes, and directed to seize all vessels, and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1,955 of the Revised Statutes, and the Proclamation of the President, dated the 4th February, 1870.

Respectfully yours,
C. S. FAIRCHILD,
*Acting Secretary.*

Captain M. A. HEALY,
*Commanding Revenue-steamer "Bear,"*
*San Francisco, California.*

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## Annex (B).

(See British Case, Appendix, Vol. III, "United States No. 2, 1890," p. 65.)

In the District Court of the United States for the District of Alaska.

August Special Term, 1886.

To the Honourable Lafayette Dawson,
Judge of said District Court:

The libel of information of M. D. Ball, Attorney for the United States for the district of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Thornton," her tackle, apparel, boats, cargo and furniture, and against all persons intervening for their interest therein, in a case of forfeiture, alleges and informs as follows:—

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel, commonly called a schooner, the "Thornton," her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:—

That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1,956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture became and forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore, the said Attorney prays that the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the case aforesaid, and others appearing, be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States in such cases made and provided.

(Signed) M. D. BALL,
*United States' District Attorney for the District of Alaska.*

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## Annex (C).

The following Table shows the names of the British sealing-vessels seized or warned by United States' revenue cruizers, 1886-90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolena," "Thornton," and "Onward," are on the authority of U.S. Naval Commander Abbey (see 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, pp. 20, 40, 50). The distances assigned in the cases of the "Anna Beck," "W. P. Sayward," "Dolphin," and "Grace," are on the authority of Captain Shepard, "U.S.R.N. (Blue Book), United States, No. 3 (1890)," pp. 80-82. See Appendix, vol. iii. Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later:—

| Name of Vessel. | Date of Seizure. | Approximate Distance from Land when seized. | United States' Vessel making Seizure. |
|---|---|---|---|
| Carolena | August 1, 1886 | 75 miles | Corwin. |
| Thornton | 1, | 70 " | " |
| Onward | 2, | 115 " | " |
| Favourite | 3, | Warned by "Corwen" in about the same position as "Onward." | |
| Anna Beck | July 2, 1887 | 66 miles | Rush. |
| W. P. Sayward | 9, | 59 " | " |
| Dolphin | 12, | 40 " | " |
| Grace | 17, | 96 " | " |
| Alfred Adams | August 10, | 62 " | " |
| Ada | 25, | 15 " | Bear. |
| Triumph | 4, | Warned by "Rush" not to enter Behring Sea. | |
| Juanita | July 31, 1889 | 66 miles | Rush. |
| Pathfinder | 29, | 50 " | " |
| Triumph | 11, | Ordered out of Behring Sea by "Rush." (?) As to position when warned. 35 miles | " |
| Black Diamond | 11, | 66 miles | " |
| Lily | August 6, | Ordered out of Behring Sea by "Rush." | |
| Ariel | July 30, | " " " | |
| Kate | August 13, | " " " | " |
| Minnie | July 15, | 65 miles | " |
| Pathfinder | March 27, | Seized in Neah Bay | Corwin. |

## No. 78.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 23.)

My Lord, *Paris, June* 20, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 24–29 of the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 78.

*Protocole No.* 24.—*Séance du Mercredi,* 17 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

La séance est levée à 3 heures 40 et le Tribunal s'ajourne jusqu'au Mardi, 23 Mai, 1893, à 11 heures 30.

Ainsi fait à Paris, le 17 Mai, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 24.—*Meeting of Wednesday, May* 17, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 3·40 P.M. the Tribunal adjourned until Tuesday, the 23rd May, 1893, at 11·30 A.M.

Done at Paris, the 17th May, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 2 in No. 78.

### *Protocole No.* 25.—*Séance du Mardi, Mai* 23, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 23 Mai, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H, TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 25.—*Meeting of Tuesday, May* 23, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 23rd May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States.. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 3 in No. 78.

*Protocole No. 26.—Séance du Mercredi, 24 Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 24 Mai, 1893, et ont signé:

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

*Protocol No. 26.—Meeting of Wednesday, May 24,* 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 24th May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States.. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 4 in No. 78.

*Protocole No. 27.—Séance du Jeudi, 25 Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 25 Mai, 1893, et ont signé:

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

[English version.]

### *Protocole No.* 27.—*Meeting of Thursday, May* 25, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 25th May, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 5 in No. 78.

### *Protocole No.* 28.—*Séance du Vendredi,* 26 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 30 Mai, à 11 heures 30.

Ainsi fait à Paris, le 26 Mai, 1893, et ont signe:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocole No.* 28.—*Meeting of Friday, May* 26, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, May 30, at 11·30 A.M.

Done at Paris, the 26th May, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN. W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 6 in No. 78.

### *Protocole No.* 29.—*Séance du Mardi,* 30 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation.

A 1 heure 30 la séance est suspendue.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 30 Mai, 1393, et ont signé :

| | |
|---|---|
| Le Président .. .. .. .. | ALPH DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocole No.* 29.—*Meeting of Tuesday, May* 30, 1893.

The Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 30th May, 1893, and signed :

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## No. 79.

### *Mr. Tupper to the Earl of Rosebery.—(Received June* 23.)

My Lord, *Paris, June* 22, 1893.

THE argument on the British side in the Behring Sea Arbitration having now concluded, I have deemed it my duty to consider whether some reduction cannot be made in the Staff of this Agency in accordance with what I know to be your Lordship's wish, that expense should, as far as possible, be spared.

With this object I have already dispensed with the services of Mr. J. M. Macoun, whose assistance I consider to be no longer necessary, and I have thought it right to inform Mr. Box, the Junior Counsel, that, as the oral argument of the British Counsel has terminated, he can now be relieved of his duties here.

I have great pleasure in expressing to your Lordship my appreciation of the ability and assiduity displayed by Mr. Box in the course of the preparation of the Counter-Case and written Argument of Great Britain, and of the valuable assistance he has rendered during the oral arguments of Counsel before the Tribunal.

I have, &c.

(Signed) CHARLES H. TUPPER.

## No. 80.

*Mr. Tupper to the Earl of Rosebery.—(Received June 23.)*

My Lord, *Paris, June* 22, 1893.

AT the commencement of yesterday's proceedings, Sir Richard Webster handed in to the Tribunal copies of the correspondence just laid before Parliament containing the report of the Russian Commission respecting the seizures of British vessels off the Commander Islands. He was proceeding to read from this paper when the United States' Counsel objected to its reception if put forward as evidence. Some discussion ensued on this subject, and the President, after consultation with his colleagues, announced that the Tribunal would hear the document, but would reserve to themselves to consider whether it should be received as evidence or not.

Sir Richard thereupon read extracts from M. Chichkine's note to Sir R. Morier of the 29th May (10th June), 1893, showing the readiness of the Russian Government to proceed to the assessment of an indemnity to be paid to the owners of the two British vessels which were seized without proof of having fished in Russian territorial waters.

Mr. Robinson then continued his speech.

He argued at some length to prove that the area over which any Regulations to be made by the Tribunal should extend ought to be confined to Behring Sea, and had just concluded his address when the Tribunal adjourned for the day.

Mr Phelps is to commence his reply on behalf of the United States at to-day's meeting.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 81.

*Mr. Tupper to the Earl of Rosebery.—(Received June 24.)*

My Lord, *Paris, June* 23, 1893.

AT the meeting of the Tribunal yesterday, Mr. Phelps commenced his reply on behalf of the United States by defining what he maintained had been the position of his Government throughout the controversy, namely, that the actual facts of seal life and the preservation of the species were the main objects of the Arbitration, and that all questions as to jurisdiction over Behring Sea and the title thereto derived by the United States from Russia were merely secondary considerations.

He attributed the firm attitude taken up by Mr. Blaine on the jurisdictional claim to the fact that he had been drawn away from the main subject of the controversy by the adroitness of the arguments put forward by Lord Salisbury.

Mr. Phelps then dwelt at some length on the negotiations for a close season which took place in 1888 between Lord Salisbury and himself, and maintained that a distinct agreement had then been arrived at, which, owing to the objections of Canada, had been subsequently renounced.

He next proceeded to criticise the attitude of Great Britain in the controversy, maintaining that, while at first she had been willing to join in Regulations necessary for the preservation of the seals, her present position was merely that of the champion of pelagic sealing

He concluded his remarks for the day by a definition of the principles of international law, which he considered should guide the decision of the Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

## No. 82.

*Mr. Tupper to the Earl of Rosebery.—(Received June 24.)*

My Lord, *Paris, June 23, 1893.*

I HAVE the honour to call your Lordship's attention to the necessity which, in my opinion, exists for the presence of Her Majesty's Attorney-General here.

I am convinced after most careful observation that it is very desirable for him to be in Court during the reply of Mr. Phelps, and particularly when that gentleman deals with the subject of Regulations. It is improbable that Mr. Phelps will speak beyond Friday next, and he resumes his argument on Tuesday.

Sir Richard Webster, who proceeded to London to-day, will, I feel sure, confirm me in the opinion I have expressed.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 83.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, June 27, 1893.*

I HAVE received your despatch of the 22nd instant, reporting that the services of Mr. J. M. Macoun have been dispensed with, and that you have also informed Mr. Box that he is no longer required to remain in Paris.

Whilst approving your action as above stated, I have to express to you my satisfaction at your report of the valuable assistance rendered by Mr. Box in connection with the Behring Sea Arbitration.

I am, &c.
(Signed) ROSEBERY.

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## No. 84.

*Mr. Tupper to the Earl of Rosebery.—(Received June 28.)*

My Lord, *Paris, June 27, 1893.*

AT the meeting of the 23rd instant Mr. Phelps continued his argument, and, after dealing with the principles of international law, which, he held, should guide the decision of the Tribunal, proceeded to consider at length the question of property in the seals.

He had not concluded this portion of his speech at the end of the day's proceedings.

I have, &c.
(Signed) CHARLES H. TUPPER.

---

## No. 85.

*Mr. Tupper to the Earl of Rosebery.—(Received June 29.)*

My Lord, *Paris, June 28, 1893.*

AT the meeting of the Tribunal yesterday, Mr. Phelps continued his speech, and, in connection with the United States' claim to property in the seals, dealt with the question of the intermingling of the Russian and American herds.

His argument on this subject occupied the greater part of the day, and was concluded shortly before the adjournment.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 86.

*Mr. Tupper to the Earl of Rosebery.*—(*Received June* 30.)

My Lord, *Paris, June* 29, 1893.

MR. PHELPS continued, before the Tribunal yesterday, his argument dealing with the property interest in the sealing industry claimed by the United States as a nation.

He examined at length the instances quoted in the United States' Case of regulations in various countries for the protection of pearl, coral, and oyster fisheries outside territorial limits, and was considering the existing laws regulating seal fisheries in different parts of the world when the Tribunal adjourned.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 87.

*Mr. Tupper to the Earl of Rosebery.*—(*Received July* 4.)

My Lord, *Paris, July* 3, 1893.

AT the meeting of the Tribunal held on the 29th June, Mr. Phelps continued his argument to show that the territorial rights of a nation were capable of extension for the purpose of protecting marine property.

He endeavoured to justify the statement in the United States' Argument, that Russia had asserted and exercised such extra-territorial jurisdiction, from the correspondence recently presented to Parliament on the subject of the seizures of British sealing-vessels by that Government in 1892.

Mr. Phelps further instanced the legislation enforced by the Government of Sweden and Norway for the protection of their fisheries.

The Tribunal having decided not to sit on the 30th June, it was arranged that Mr. Phelps should resume his argument this morning.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 88.

*Mr. Tupper to the Earl of Rosebery.*—(*Received July* 5.)

My Lord, *Paris, July* 4, 1893.

MR. PHELPS resumed yesterday his argument by dealing with the first four questions under Article VI of the Treaty relating to the jurisdiction of Russia over Behring Sea, and the interpretation of the Treaties of 1824 and 1825.

He examined the language of the Treaty of 1824 between Russia and the United States, and endeavoured to show that Behring Sea was not included in the phrase "Pacific Ocean," as used in the first Article.

He criticized at some length the list of maps annexed to the Counter-Case of Great Britain, and maintained that the weight of the geographical evidence supported his interpretation of the Treaty.

Mr. Phelps had concluded his examination of the Treaty of 1824 when the Tribunal rose for the day, and will proceed this morning to deal with the British Treaty with Russia of 1825.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 89.

*Mr. Tupper to the Earl of Rosebery.—(Received July* 6.)

My Lord, *Paris, July* 5, 1893.

MR PHELPS continued, at the meeting of the Tribunal yesterday, his argument on the first four questions of Article VI of the Treaty of Arbitration.

He discussed the language of the Treaty of 1825 between Great Britain and Russia, and the negotiations which led up to it, his object being to show that Behring Sea was not understood by either party to be included in the phrase Pacific Ocean.

Having concluded his examination of the Treaties of 1824 and 1825, Mr. Phelps took leave of this part of his subject by referring the Tribunal to the answers to the first four questions of Article VI, suggested at p. 24 of the United States' Counter-Case.

He then dealt with the assertion of Great Britain, that the subject under discussion involved the question of the freedom of the sea, and had only time to make short progress in this portion of his argument before the adjournment.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 90.

*Mr. Tupper to the Earl of Rosebery.—(Received July* 7.)

My Lord, *Paris, July* 5, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols Nos. 30 to 39 of the proceedings of the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 1 in No. 90.

*Protocole No.* 30.—*Séance du Mercredi,* 31 *Mai,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell,* au cours de sa plaidoirie, présente au Tribunal le document suivant :—

" Le Gouvernement de la Grande-Bretagne, ayant soumis aux Arbitres certains points de fait compris dans les réclamations de dommages-intérêts présentées dans l'Annexe au Mémoire Britannique, pages 1 à 60 inclusivement, prie le Tribunal de décider comme suit à ce sujet :—

" 1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de capitaines et d'équipages, mentionnés respectivement dans ladite Annexe, ont été faites par autorité du Gouvernement des États-Unis ;

" 2. Qu'elles ont été effectuées dans des eaux non territoriales ;

" 3. Que les diverses visites, saisies, condamnations et confiscation de navires ou de marchandises, les différentes arrestations et amendes, et les divers emprisonnements ont été motivés par de prétendues violations des lois nationales des États-Unis, lesquelles prétendues violations avaient toutes été commises en haute mer, en dehors des eaux territoriales des États-Unis ;

" 4. Que les différents ordres mentionnés dans ladite Annexe, enjoignant à certains navires d'avoir à s'abstenir de poursuivre leurs voyages, ont été donnés en haute mer,

en dehors des eaux territoriales, en vertu de l'autorité du Gouvernement des États-Unis et en exécution des lois nationales des États-Unis; enfin:

"5. Que lesdites visites, saisies, condamnations, confiscations, amendes, n'ont été opérées ou imposées, que lesdits emprisonnements et ordres n'ont été infligés et donnés en vertu d'aucune prétention ou assertion de droit ou de juridiction, autre que celles qui sont soumises à la décision des Arbitres par les questions posées dans l'Article VI du Traité d'Arbitrage."

*Sir Charles Russell* déclare en outre que la Grande-Bretagne ne soumettra au Tribunal aucune conclusion tendant à des dommages-intérêts en vertu et par application de l'Article V de la Convention ou du *modus vivendi* du 18 Avril, 1892.

*L'Honorable E. J. Phelps* déclare que les États-Unis ne soumettront, de leur côté, au Tribunal aucune conclusion tendant à des dommages-intérêts en vertu et par application de l'Article V de la Convention ou du *modus vivendi* du 18 Avril, 1892.

*Sir Charles Russell* achève ensuite son argumentation.

*Sir Richard Webster* commence alors sa plaidoirie pour la Grande-Bretagne.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 31 Mai, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire ... ... ... A. IMBERT.

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[English version.]

*Protocol No. 30.—Meeting of Wednesday, May 31, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell*, in continuation of his argument, presented to the Tribunal the following paper:—

"The British Government having submitted to the Arbitrators certain questions of fact as involved in the claims for damage set forth in the Schedule to the British Case, pages 1 to 60 inclusive, ask for the following findings thereon, namely:—

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the said Schedule, were made by the authority of the United States' Government.

"2. That they were made in non-territorial waters.

"3. That the several searches, seizures, condemnations and confiscations, whether of ships or goods, and the several arrests, fines and imprisonments, were for alleged breaches of municipal laws of the United States, which alleged breaches were wholly committed on the high seas outside the territorial waters of the United States.

"4. That the several orders, mentioned in the said Schedule, whereby ships were prevented from pursuing their voyages, were given on the high seas outside territorial waters, under the authority of the United States' Government and in execution of the municipal laws of the United States, and

"5. That the said several searches, seizures, condemnations, confiscations, fines, imprisonments, and orders were not made, imposed or given under any claim or assertion of right or jurisdiction except such as is submitted to the decision of the Arbitrators by the questions in Article VI of the Treaty of Arbitration."

*Sir Charles Russell* further announced that Great Britain would not ask the Tribunal for any finding for damages upon and under Article V of the Convention or *modus vivendi* of the 18th April, 1892.

*The Honourable Edward J. Phelps* announced that the United States would not, on its behalf, ask the Tribunal for any finding for damages upon and under Article V of the Convention or *modus vivendi* of the 18th April, 1892.

*Sir Charles Russell* then concluded his argument.

*Sir Richard Webster* then commenced his argument on behalf of Great Britain.

At 1·30 the Tribunal took a recess.

On reassembling *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned till the next day, at 11·30 A.M.

Done at Paris, the 31st May, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, *Co-Secretaries.*

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## Inclosure 2 in No. 90.

### *Protocole No.* 31.—*Séance du Jeudi,* 1er *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* continue sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 1er Juin, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 31.—*Meeting of Thursday, June* 1, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 1st June, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, *Co-Secretaries.*

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## Inclosure 3 in No. 90.

### *Protocole No.* 32.—*Séance du Vendredi,* 2 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 6 Juin, à 11 heures 30.

Ainsi fait à Paris, le 2 Juin, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No. 32.—Meeting of Friday, June 2, 1893.*

THE Tribunal assembled at 11·30, all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 6th June, at 11·30 A.M.

Done at Paris, the 2nd June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 4 in No. 90.

### *Protocole No. 33.—Séance du Mardi, 6 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Son Excellence M. Gram*, Arbitre désigné par la Suède et la Norvège, donne lecture de la déclaration suivante:—

"Le premier volume de l'Appendice au Mémoire des États-Unis donne le texte de la loi et des règlements concernant la protection des baleines sur la côte de Finmark.

"J'avais l'intention d'expliquer ultérieurement à mes collègues ces lois et règlements en indiquant les circonstances naturelles qui ont obligé la Norvège et la Suède à adopter une législation spéciale pour les eaux territoriales, et d'exprimer en même temps mon opinion sur la question de savoir si cette législation et les questions auxquelles elle se rapporte peuvent être considérées comme ayant quelque portée à l'égard des questions actuellement débattues.

"Comme, toutefois, on a fait allusion, à plusieurs reprises, pendant les dernières séances, à la législation Norvégienne sur la matière, j'estime qu'il y aurait présentement intérêt à donner un bref exposé des traits les plus saillants de cette législation.

"Le caractère particulier de la Loi Norvégienne citée par les Conseils des États-Unis consiste dans la détermination d'une saison fermée pour la pêche de la baleine. Quant à ses prescriptions au sujet des eaux intérieures et territoriales, elles ne sont, en somme, que l'application à un cas spécial des principes généraux établis par la législation Norvégienne en ce qui concerne les golfes et les eaux baignant les côtes. Un coup d'œil sur la carte suffira pour montrer le grand nombre de ces golfes—ou "fjörds" et leur importance pour les habitants de la Norvège. Certains de ces fjörds ont une étendue considérable, pénètrent très avant à l'intérieur du pays et ont une très large embouchure. Ils ont été, toutefois, depuis un temps immémorial, considérés comme des eaux intérieures, et ce principe a toujours été maintenu, même à l'égard des étrangers.

"Il y a plus de vingt ans, un Gouvernement étranger se plaignit de ce qu'on eût empêché un navire de sa nationalité de pêcher dans un des plus grands fjörds du nord de la Norvège. Les opérations de pêche qui ont lieu dans ces parages pendant les quatre premiers mois de l'année sont d'une très grande importance pour le pays: une trentaine de mille personnes s'y réunissent chaque année, du Nord et du Sud, pour gagner leur vie. Le Gouvernement soumet à son inspection les opérations de pêche dans les eaux du fjörd, abrité par une rangée d'îles contre la violence de la mer. L'apparition dans ces eaux d'un navire étranger émettant la prétention de prendre part à cette pêche était un fait sans précédent, et, dans la correspondance diplomatique échangée à ce sujet, le Gouvernement Norvégien insista énergiquement sur le droit exclusif qu'avaient ses sujets, par suite d'un usage immémorial, de pratiquer cette industrie.

"La Suède et la Norvège n'ont, d'ailleurs, jamais reconnu la distance de 3 milles comme formant la délimitation de leurs eaux territoriales. Jamais ces deux pays n'ont conclu aucune Convention ni adhéré à aucun Traité consacrant cette règle.

Leurs lois nationales ont généralement fixé la limite à 1 mille géographique ou à un quinzième de degré de latitude, soit 4 milles marins. Ils n'ont jamais admis aucune limite inférieure. En fait, relativement à la question des droits de pêche, si importants pour l'un et l'autre des deux Royaumes-Unis, lesdites limites ont semblé, dans beaucoup de cas, encore trop restreintes. Quant à cette question et à celles qui s'y rattachent, je désire me reporter aux communications faites par les membres Norvégiens et Suédois, au cours des séances de l'Institut de Droit International, en 1891 et 1892. Je tiens aussi, en ce qui touche le sujet que je viens de traiter sommairement, à me référer aux comptes rendus des travaux de la Conférence de La Haye en 1882 ('Nouveau Recueil Général de Martens, II$^e$ série, vol. ix'), où se trouvent exposées les raisons pour lesquelles la Suède et la Norvège n'ont pasadhéré au Traité de La Haye."

Le Président prie les Conseils des deux parties d'avoir présentes à l'esprit les observations de son Excellence M. Gram, au cas où ils auraient à citer l'exemple des eaux de la Norvège; mais il croit devoir rappeler que la question de la définition des eaux territoriales n'est pas soumise aux Arbitres et qu'il n'est pas dans les intentions du Tribunal d'exprimer une opinion en ce qui concerne cette définition.

*Sir Richard Webster* reprend alors son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures, la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 6 Juin, 1893, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No. 33.—Meeting of Tuesday, June 6, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*His Excellency M. Gram*, the Arbitrator designated by Sweden and Norway, read the following statement:—

"The Appendix, vol. I, to the United States' Case, gives the text of the Laws and Regulations relating to the protection of whales on the coast of Finnmarken. It was my intention later on to explain to my colleagues these Laws and Regulations, in supplying some information about the natural conditions of Norway and Sweden which have necessitated the establishment of special rules concerning the territorial waters, and to state at the same time my opinion as to whether those rules and their subject-matter may be considered as having any bearing on the present case. As, however, in the latest sittings reference has repeatedly been made to the Norwegian legislation concerning this matter, I think it might be of some use at the present juncture to give a very brief relation of the leading features of those rules.

"The peculiarity of the Norwegian Law quoted by the Counsel for the United States, consists in its providing for a close season for the whaling. As to its stipulations about inner and territorial waters, such stipulations are simply applications to a special case of the general principles laid down in the Norwegian legislation concerning the gulfs and the waters washing the coasts. A glance on the map will be sufficient to show the great number of gulfs or fiords, and their importance for the inhabitants of Norway. Some of these fiords have a considerable development, stretching themselves far into the country and being at their mouth very wide. Nevertheless they have been from time immemorial considered as inner waters, and this principle has always been maintained, even as against foreign subjects.

"More than twenty years ago, a foreign Government once complained that a vessel of their nationality had been prevented from fishing in one of the largest fiords of Norway, in the northern part of the country. The fishing carried on in that neighbourhood during the first four months of every year is of extraordinary importance to the country, some 30,000 people gathering there from south and north, in order to earn their living. A Government inspection controls the fishing going on in the waters of the fiord, sheltered by a range of islands against the violence of the sea. The appearance in these waters of a foreign vessel pretending to take its share of the fishing, was an unheard-of occurrence, and in the ensuing diplomatic correspondence the exclusive

right of Norwegian subjects to this industry was energetically insisted upon as founded in immemorial practice.

"Besides, Norway and Sweden have never recognized the 3-mile limit as the confines of their territorial waters. They have neither concluded nor acceded to any Treaty consecrating that rule. By their municipal laws the limit has generally been fixed at 1 geographical mile, or one-fifteenth part of a degree of latitude, or 4 marine miles; no narrower limit having ever been adopted. In fact, in regard to this question of the fishing rights, so important to both of the United Kingdoms, the said limits have in many instances been found to be even too narrow As to this question and others therewith connected, I beg to refer to the communications presented by the Norwegian and Swedish members in the sittings of the 'Institut de Droit International' in 1891 and 1892. I wish also to refer, concerning the subject which I have now very briefly treated, to the proceedings of the Conference of the Hague in 1882 ('Martens' Nouveau Recueil Général, II$^e$ série, vol. ix'), containing the reasons why Sweden and Norway have not adhered to the Treaty of the Hague."

*The President* requested that Counsel on both sides would bear in mind the observations of *his Excellency M. Gram,* in case they found it necessary to cite the example of the waters of Norway, but thought it his duty to remind them that the question of the definition of territorial waters was not submitted to the Arbitrators and that it was not the intention of the Tribunal to express any opinion with respect to that definition.

*Sir Richard Webster* then resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 6th June, 1893, and signed:

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|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYGHAME, } *Co-Secretaries.*

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### Inclosure 5 in No. 90.

### *Protocole No.* 34.—*Séance du Mercredi,* 7 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend et termine son argumentation.

*M. Christopher Robinson* commence ensuite son plaidoyer.

La séance est suspendue à 1 heure 30.

A la reprise, *M. Robinson* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures.

Ainsi fait à Paris, le 7 Juin, 1893, et ont signé:

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|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 34.—*Meeting of Wednesday, June* 7, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed and concluded his argument.

*Mr. Christopher Robinson* then began his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Mr. Robinson* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day, at 11 o'clock.

Done at Paris, the 7th June, 1893, and signed :

The President .. .. .. ALPH. DE COURCEL
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. ... .. A. IMBERT.

Translation certified to be accurate :
(Signed) A, BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 6 in No. 90.

### *Protocole No.* 35.—*Séance du Jeudi*, 8 *Juin*, 1893.

LE Tribunal s'est réuni en Chambre du Conseil, à 11 heures, tous les Arbitres étant présents.

La séance publique a commencé à midi.

*Mr. Christopher Robinson* continue et achève son argumentation.

L'Agent des États-Unis donne alors lecture de la déclaration suivante :—

"Le Gouvernement des États-Unis,—pour le cas où la solution donnée par le Haut Tribunal à certaines questions indiquées dans l'Article VII du Traité comme étant les 'questions ci-dessus relatives à la juridiction exclusive des États-Unis' serait, ainsi qu'il est énoncé dans ledit Article VII, 'telles que le concours de la Grande-Bretagne soit nécessaire à l'institution de Règlements en vue de la protection efficace et de la conservation des phoques à fourrure habitant ou fréquentant habituellement la Mer de Behring,'—expose que les Règlements suivants sont nécessaires et devraient s'appliquer aux eaux dont il sera fait mention à cet effet ci-après :

"*Premièrement.*—Aucun citoyen ou sujet des États-Unis ou de la Grande-Bretagne ne pourra, de quelque façon que ce soit, tuer, capturer, ou poursuivre sur aucun point de la mer, dans les bornes et limites ci-après marquées pour la mise en vigueur du présent Règlement, aucun des animaux communément appelés 'phoques à fourrure.'

"*Deuxièmement.*—Le Règlement qui précède s'appliquera et s'étendra à toutes les eaux de l'Océan Pacifique Septentrional ou de la Mer de Behring, au nord du 35<sup>e</sup> parallèle de latitude nord, et à l'est du 180<sup>e</sup> méridien de longitude ouest de Greenwich, en dehors des limites de la juridiction des nations ci-dessus mentionnées. Toutefois, il ne s'appliquera pas à la poursuite et à la capture desdits phoques par les Indiens résidant sur les côtes des territoires de la Grande-Bretagne ou des États-Unis, pour leur usage personnel, au moyen de harpons, dans des pirogues ou embarcations non pontées, non embarquées sur d'autres navires ou détachées de ceux-ci, manœuvrées uniquement à la pagaie, et qui ne soient pas montées par plus de deux hommes chacune, de la façon anciennement pratiquée par ces Indiens.

"*Troisièmement.*—Tout vaisseau, navire, bateau ou autre embarcation (en dehors des pirogues ou embarcations mentionnées et décrites dans le paragraphe précédent), appartenant aux citoyens ou sujets de l'une ou l'autre des nations susdites, qui serait trouvé détruisant, poursuivant ou capturant lesdits phoques, ou engagé dans un voyage ayant ce but, dans les eaux ci-dessus délimitées et décrites, pourra, avec ses agrès, apparaux, matériel, provisions et toutes les peaux de phoques qui se trouveraient à bord, être capturé et saisis comme prise par tout navire armé pour le service public de l'une ou l'autre des susdites nations ; et dans le cas d'une telle capture, il pourra être amené dans tout port de la nation à laquelle appartiendrait le navire capteur et être condamné en suite d'une procédure devant tout Tribunal ayant juridiction compétente, laquelle procédure sera conduite, autant que faire se pourra, conformément aux usages et à la pratique des Cours d'Amirauté siégeant comme Tribunaux de Prises."

L'Agent des États-Unis donne également lecture de la proposition suivante :—

"Le Gouvernement des États-Unis propose de substituer aux conclusions de fait présentées par le Gouvernement de la Grande-Bretagne les conclusions suivantes. Dire :

"1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de capitaines et d'équipages, mentionnées respectivement dans ladite Annexe ont été faites par autorité du Gouvernement des États-Unis. Sur la question de savoir quels navires et combien parmi les navires mentionnés dans cette Annexe étaient en tout ou en partie la propriété de sujets Britanniques, et quels navires et combien parmi ces navires étaient en tout ou en partie la propriété de citoyens Américans, le Tribunal ne se prononce pas. Il ne détermine pas non plus la valeur de ces navires ou de leurs cargaisons, ensemble ou séparément.

"2. Que les susdites saisies ont été faites en mer à plus de 10 milles de toute côte.

"3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avait reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après (Annexe A), les autres exemplaires desdites instructions étant conformes à ce modèle sur tous les points essentiels; que dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont une copie est annexée ci-dessous (Annexe B), les actes d'accusation déposés dans les autres procédures étant, en tous points essentiels, semblable à ce modèle; que les actes ou délits allégués comme motifs de ces visites et saisies ont été accomplis ou commis en mer à plus de 10 milles de toute côte; et que, dans tous les cas où une condamnation a été prononcée, excepté dans les cas où le navire a été relâché après condamnation, la prise a été approuvée par le Gouvernement des États-Unis; que les amendes et emprisonnements susdits ont été prononcés à raisons d'infractions aux lois nationales des États-Unis, infractions toutes commises en mer à plus de 10 milles de toute côte.

"4. Que les différents ordres, mentionnés dans ladite Annexe, enjoignant à certains navires de quitter la Mer de Behring, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient, toutes les fois qu'ils donnaient ces ordres, des instructions conformes à celles mentionnées ci-dessus sous le No. 3, et que les navires qui ont reçu ces sommations étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse.

"5. Que lesdites visites, saisies, condamnations, confiscations, amendes, n'ont été opérées ou imposées; que lesdits emprisonnements et ordres n'ont été infligés et donnés en vertu d'aucune prétention ou affirmation de droit ou de juridiction, autres que celles qui sont soumises à la décision des Arbitres par les questions posées dans l'Article VI du Traité d'Arbitrage.

"6. Que les Cours de District des États-Unis devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires saisis dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne, pages 1 à 60 inclusivement, avaient tous droits de juridiction et pouvoirs appartenant au Cours d'Amirauté, y compris la juridiction de Tribunaux de Prises."

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## Annexe (A).

(Voir: Contre-Mémoire Anglais, Appendice, vol. I, p. 72.)

(Traduction.)

*Département du Trésor, Cabinet du Secrétaire,*
*Washington, le* 21 *Avril,* 1886.

Monsieur,

COMME suite à une lettre du Département, en date de ce jour, vous enjoignant de vous diriger avec le vapeur du service des Douanes "Bear," placé sous votre commandement, vers les îles aux phoques, vous êtes par les présentes investi de tous les pouvoirs nécessaires pour assurer l'exécution de la Loi dont les termes sont contenus dans la Section 1956 des Statuts Revisés des États-Unis, et ordre vous est donné de saisir tout navire, et d'arrêter et livrer aux autorités compétentes tout individu ou toutes personnes que vous trouveriez agissant en violation de la Loi susmentionnée, après qu'un avertissement suffisant leur aura été donné.

Vous saisirez également tous spiritueux et armes à feu que l'on chercherait à introduire dans le pays sans une permission en règle, en exécution de la Section 1955 des Statuts Revisés et de la Proclamation du Président en date du 4 Février, 1870.

Respectueusement à vous,

(Signé) C. S. FAIRCHILD.
*Secrétaire par intérim.*

Au Capitaine M. A. Heldy,
Commandant le vapeur du service des Douanes "Bear," à San-Francisco (Californie).

## Annexe (B).

(Voir : Mémoire de la Grande-Bretagne, Appendice, vol. III, États-Unis, No. 2, 1890. p. 65.)

*Devant la Cour de District des États-Unis pour le District d'Alaska.*

Session (Special Term) d'Août 1886.

A l'Honorable Lafayette Dawson, Juge de ladite Cour de District.

Le réquisitoire à fin d'information par lequel M. D. Ball, Attorney des États-Unis pour le district d'Alaska, poursuivant au nom des États-Unis et présent ici devant la Cour, en sa personne, comme Représentant des États-Unis et en leur nom, contre la goélette "Thornton," ses agrès, apparaux, embarcations, cargaisons et matériel et contre toutes personnes intervenant comme ayant des intérêts engagés dans ce navire, en poursuite à fin de confiscation, présente les allégations et déclarations suivantes :

Que Charles A. Abbey, officier du service des Douanes Maritimes des États-Unis, chargé d'une mission spéciale dans les eaux du district d'Alaska, antérieurement au présent jour, à savoir le 1er Août, 1886, dans les limites du territoire d'Alaska et dans ses eaux, et dans les limites du district civil et judiciaire d'Alaska, à savoir dans l'étendue des eaux de cette partie de la Mer de Behring qui appartient au dit district, dans des eaux navigables pour des navires venant de la haute mer et jaugeant 10 tonneaux ou au-dessus, a saisi le vaisseau ou navire communément dénommé goélette, le "Thornton," ses agrès, apparaux, embarcations, cargaison et matériel, lesquels étaient la propriété d'une ou de plusieurs personnes inconnues dudit Attorney, et les a confisqués au profit des États-Unis pour les causes ci-après :

Que ledit navire ou goélette a été trouvé se livrant à la destruction des phoques à fourrure, dans les limites du territoire d'Alaska et de ses eaux, en violation des dispositions de la Section 1956 des Statuts Revisés des États-Unis.

Et ledit Attorney déclare que toutes les propositions ci-dessus énoncées et chacune d'elles sont et étaient vraies, et qu'elles tombent sous la juridiction maritime et d'Amirauté de cette Cour, et que, pour cette raison, et en exécution des Statuts des États-Unis établis et édictés pour de tels cas, le navire ou la goélette mentionnée et décrite ci-dessus, jaugeant plus de 20 tonneaux, ses agrès, apparaux, embarcations, cargaison et matériel ont été et sont confisqués au profit des États-Unis, et que ladite goélette se trouve maintenant dans le district susdit.

Ce pourquoi ledit Attorney demande que l'honorable Cour de Justice procède et avise comme d'usage en cette affaire, et que toutes personnes ayant un intérêt dans ladite goélette ou navire soient citées par voie d'assignation générale ou spéciale, afin de répondre aux propositions susénoncées, et que, à la suite de la procédure à ce nécessaire, ledit navire ou goélette, ses agrès, apparaux, embarcations, cargaison et matériel, soient condamnés pour ladite cause ou toute autre qu'il apparaîtrait juste, par arrêt formel et décret de cette honorable Cour, et confisqués au profit desdits États-Unis, selon la forme des Statuts desdits États-Unis, établis et édictés pour de tels cas.

(Signé) M. D. BALL,
*Attorney des États-Unis pour le District d'Alaska.*

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La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* commence sa plaidoirie, pour le Gouvernement de la Grande-Bretagne, sur la question des Règlements prévus par l'Article VII du Traité d'Arbitrage.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain, à 11 heures 30.

Ainsi fait à Paris, le 8 Juin, 1893, ayant signé :

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocole No. 35.—Meeting of Thursday, June 8, 1893.*

THE Tribunal assembled in the Council Chamber at 11 o'clock, all the Arbitrators being present.

The public sitting commenced at noon.

*Mr. Christopher Robinson* continued and finished his address.

The United States' Agent then read the following statement :—

"The Government of the United States, in the event that the determination of the High Tribunal of certain questions described in the VIIth Article of the Treaty as

'the foregoing questions as to the exclusive jurisdiction of the United States' should, as mentioned in said VIIth Article, 'leave the subject in such a condition that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur seal in, or habitually resorting to, Behring Sea,' submits that the following regulations are necessary, and that the same should extend over the waters hereinafter in that behalf mentioned:

"*Firstly.*—No citizen or subject of the United States or Great Britain shall in any manner kill, capture, or pursue anywhere upon the seas, within the limits and boundaries next hereinafter prescribed for the operation of this Regulation, any of the animals commonly called fur seals.

"*Secondly.*—The foregoing regulation shall apply to and extend over all those waters outside the jurisdictional limits of the above-mentioned nations of the North Pacific Ocean or Behring Sea, which are north of the 35th parallel of north latitude, and east of the 180th meridian of longitude west from Greenwich. Provided, however, that it shall not apply to such pursuit and capture of said seals as may be carried on by Indians dwelling on the coasts of the territory, either of Great Britain or the United States, for their own personal use, with spears, in open canoes or boats not transported by, or used in connection with other vessels, and propelled wholly by paddles, and manned by not more than two men each, in the way anciently practised by such Indians.

*Thirdly.*—Any ship, vessel, boat, or other craft (other than the canoes or boats mentioned and described in the last foregoing paragraph) belonging to the citizens or subjects of either of the nations aforesaid, which may be found actually engaged in the killing, pursuit, or capture of said seals, or prosecuting a voyage for that purpose, within the waters above bounded and described, may, with her tackle, apparel, furniture, provisions, and any seal-skins on board, be captured and made prize of by any public armed vessel of either of the nations aforesaid; and, in case of any such capture may be taken into any port of the nation to which the capturing vessel belongs, and be condemned by proceedings in any Court of competent jurisdiction, which proceedings shall be conducted, so far as may be, in accordance with the course and practice of Courts of Admiralty when sitting as Prize Courts."

The Agent of the United States also read the following statement:

"Substitute proposed by the Government of the United States for findings of facts submitted by the Government of Great Britain:—

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the said Schedule, were made by the authority of the United States' Government. Which, and how many of the vessels mentioned in said Schedule were in whole, or in part, the actual property of British subjects, and which and how many where in whole, or in part, the actual property of American subjects, is a fact not passed upon by this Tribunal. Nor is the value of said vessels or contents, or either of them, determined.

"2. That the seizures aforesaid were made upon the sea more than 10 miles from any shore.

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked 'A,' and that the others were, in all substantial respects, the same; that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked 'B,' and that the libels in the other proceedings were, in all substantial respects, the same; that the alleged acts or offences for which said several searches and seizures were made, were, in each case, done or committed upon the seas more than 10 miles from any shore; and that in each case in which sentence of condemnation was had, except in those cases when the vessel was released after condemnation, the capture was adopted by the Government of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed upon the seas more than 10 miles from any shore.

"4. That the several orders mentioned in said Schedule warning vessels to leave Behring Sea were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose.

"5. That the said several searches, seizures, condemnations, confiscations, fines, imprisonments, and orders were not made, imposed, or given under any claim or assertion of right or jurisdiction, except such as is submitted to the decision of the Arbitrators by the questions in Article VI of the Treaty of Arbitration.

"6. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and power of Courts of Admiralty, including the prize jurisdiction."

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## Annexe (A).

(See British Counter-Case, Appendix, vol. I, p. 72.)

*Treasury Department, Office of the Secretary,*
*Washington, April* 21, 1886.

Sir,

Referring to Department letter of this date, directing you to proceed with the revenue-steamer "Bear," under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the Law contained in the provisions of Section 1956 of the United States' Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the Law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President, dated the 4th February, 1870.

Respectfully yours,

(Signed) C. S. FAIRCHILD.
*Acting Secretary.*

Captain M. A. Healy,
Commanding Revenue-steamer "Bear," San-Francisco, California.

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## Annexe (B).

(See British Case, Appendix, vol. III, U.S. No. 2, 1890, p. 65.)

*In the District Court of the United States for the District of Alaska.*

August Special Term, 1886.

To the Honorable Lafayette Dawson, Judge of said District Court.

The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner "Thornton," her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the District of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska territory, and in the waters thereof, and within the civil and judicial District of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said District, on waters navigable from the sea by vessel of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the "Thornton," her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur seal within the limits of Alaska territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore the said Attorney prays the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States, according to the form of the Statute of the said United States in such cases made and provided.

(Signed) M. D. BALL,
*United States' District Attorney for the District of Alaska.*

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At 1·30 the Tribunal took a recess.

On reassembling *Sir Charles Russell* began his argument on behalf of the Government of Great Britain on the question of Regulations as contemplated by Article VII of the Treaty of Arbitration.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 8th June, 1893, and signed:

The President .. .. .. ALPH DE COURCEL.
The Agent for the United States.. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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## Inclosure 7 in No. 90.

### *Protocole No.* 36.—*Séance du Vendredi, 9 Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend son argumentation de la veille.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Charles Russell* continue sa plaidoirie.

La séance est levée à 4 heures et le Tribunal s'ajourne jusqu'au Mardi, 13 Juin, à 11 heures 30.

Ainsi fait à Paris, le 9 Juin, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 36.—*Meeting of Friday, June* 9, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed his argument of the previous day.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Charles Russell* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 13th June, at 11·30 A.M.

Done at Paris, the 9th June, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. Bailly-Blanchard, H. Cunynghame, } *Co-Secretaries.*

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## Inclosure 8 in No. 90.

### *Protocole No.* 37.—*Séance du Mardi,* 13 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Charles Russell* reprend et achève son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* commence sa plaidoirie pour la Grande-Bretagne sur la question des Règlements.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 13 Juin, 1893, et ont signé :

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 37.—*Meeting of Tuesday, June* 13, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Charles Russell* resumed and concluded his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* began his argument on behalf of Great Britain on the question of Regulations.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 13th June, 1893, and signed :

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME, }

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## Inclosure 9 in No. 90.

### *Protocole No.* 38.—*Séance du Mercredi,* 14 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 14 Juin, 1893, et ont signé :

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

[English version.]

### *Protocol No.* 38.—*Meeting of Wednesday, June* 14, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 13th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. Bailly-Blanchard, } *Co-Secretaries.*
H. Cunynghame, }

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Inclosure 10 in No. 90.

### *Protocole No.* 39.—*Séance du Jeudi,* 15 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures.

Ainsi fait à Paris, le 15 Juin, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 39.—*Meeting of Thursday, June* 15, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1·30 the Tribunal took a recess.

On reasembling, *Sir Richard Webster* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11 A.M.

Done at Paris, the 15th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. Bailly-Blanchard, } *Co-Secretaries.*
H. Cunynghame, }

## No. 91.

*Mr. Tupper to the Earl of Rosebery.*—(*Received July* 8.)

My Lord, *Paris, July* 7, 1893.

MR. PHELPS, in continuing his argument on the 5th instant, dealt with the question of the extent of the freedom of the sea. He then passed on to consider the facts to which the abstract rules propounded by him were to be applied. After a reference to the value of the sealing industry he proceeded to attack pelagic sealing, and for that purpose entered into an examination of the evidence submitted by both sides.

He first referred to the question of the number of female seals killed at sea, and did not finish his observations on this subject until yesterday.

He next discussed the evidence respecting the dead pups found on the islands, and concluded the day's proceedings with a reference to the criticisms made on the British side with regard to the management of the sealing industry on the islands by the United States' authorities.

Mr. Phelps announced that he hoped to be able to finish his speech to-day.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 92.

*Mr. Tupper to the Earl of Rosebery.*—(*Received July* 12.)

My Lord, *Paris, July* 11, 1893.

IN his speech on the 7th instant Mr. Phelps concluded his argument against pelagic sealing, and after the luncheon interval proceeded to deal with the question of Regulations.

His remarks on this subject were directed to prove the inadequacy of the measures proposed on the British side to preserve the seals from extermination.

He was unable to close his address before the hour of adjournment, and it was arranged that the Tribunal should sit at 2 o'clock on the following day to enable him to conclude.

On the 8th instant Mr. Phelps finished his speech, and after an expression of thanks on both sides to the President and other Arbitrators, the public sittings of the Tribunal were brought to a close.

I have, &c.
(In the absence of Mr. Tupper),
(Signed) R. P. MAXWELL.

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## No. 93.

*Mr. Tupper to the Earl of Rosebery.*—(*Received July* 19.)

My Lord, *Paris, July* 18, 1893.

I HAVE the honour to transmit to your Lordship copies of the official Protocols of the proceedings before the Tribunal of Arbitration, Nos. 40, 42, 43, 44, 45, 46, and 47.

Owing to the necessity of making some alterations in the text, the 41st Protocol has not yet been issued.

I have, &c.
(Signed) CHARLES H. TUPPER.

### Inclosure 1 in No. 93.

### *Protocole No.* 40.—*Séance du Vendredi,* 16 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures, tous les Arbitres étant présents.

*Sir Richard Webster* reprend son argumentation.

La séance est suspendue à 1 heure.

A la reprise, *Sir Richard Webster* continue sa plaidoirie.

En levant la séance, à 3 heures 30, *le Président* annonce que, pendant l'absence temporaire de Mr. Cunynghame, le Tribunal autorise Mr. Henry Hannen, avocat, à remplir ses fonctions.

Puis le Tribunal s'ajourne jusqu'au Mardi, 20 Juin, à 11 heures 30.

Ainsi fait à Paris, le 16 Juin, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 40.—*Meeting of Friday, June* 16, 1893.

THE Tribunal assembled at 11 o'clock, all the Arbitrators being present.

*Sir Richard Webster* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Sir Richard Webster* continued his argument.

*The President*, in adjourning, announced that during the temporary absence of Mr. Cunynghame, the Tribunal authorized Mr. Henry Hannen, Barrister-at-Law, to perform his duties.

At 3·30 P.M. the Tribunal adjourned until Tuesday, 20th June, at 11·30 A.M.

Done at Paris, the 16th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States.. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME, }

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### Inclosure 2 in No. 93.

### *Protocole No.* 42.—*Séance du Mercredi,* 21 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* présente et propose de lire au Tribunal certains documents qui viennent d'être distribués au Parlement Britannique et qui contiennent une correspondance entre la Grande-Bretagne et la Russie au sujet des saisies de navires Anglais par les croiseurs Russes dans la Mer de Behring.

*Mr. Carter* s'oppose à ce que ces documents soient considérés comme ayant été déposés devant le Tribunal.

Après avoir consulté ses collègues, *le Président* déclare que le Tribunal autorise la lecture de ses pièces, mais en se réservant de décider ultérieurement si elles seront admises ou non comme moyen de preuve.

*Sir Richard Webster* lit alors un extrait des documents en question.

*Mr. Christopher Robinson* reprend ensuite son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *Mr. Robinson* continue et achève sa plaidoirie.

A 3 heures 50 la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 21 Juin, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 42.—*Meeting of Wednesday, June* 21, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* produced, and proposed to read to the Tribunal certain documents recently presented to the Parliament of Great Britain containing correspondence between Great Britain and Russia on the subject of the seizure of British vessels by Russian cruizers in the Behring Sea.

*Mr. Carter* objected to these documents being regarded as before the Tribunal.

*The President,* after consultation with his colleagues, announced that the Tribunal would permit the documents to be read, but reserved to itself for further consideration the question of their admissibility as evidence.

*Sir Richard Webster* then read an extract from the documents in question.

*Mr. Christopher Robinson* then resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *Mr. Robinson* continued and concluded his argument.

At 3·50 P.M., the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 21st June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*
HENRY A. HANNEN, *Acting Co-Secretary.*

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## Inclosure 3 in No. 93.

### *Protocole No.* 43.—*Séance du Jeudi,* 22 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* commence sa plaidoirie pour les États-Unis.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue son argumentation.

La séance est levée à 4 heures, et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 22 Juin, 1893, et ont signé ;

| | |
|---|---|
| Le Président .. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHAS. H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No.* 43.—*Meeting of Thursday, June* 22, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* began his argument on behalf of the United States.

At 1·30 the Tribunal took a recess.

On reassembling, the *Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 22nd June, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*
HENRY A. HANNEN, *Acting Co-Secretary.*

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## Inclosure 4 in No. 93.

### *Protocole No.* 44.—*Séance du Vendredi,* 23 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne jusqu'au Mardi, 27 Juin, à 11 heures 30.

Ainsi fait à Paris, le 23 Juin, 1893, et ont signé:

Le Président .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 44.—*Meeting of Friday, June* 23, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling the *Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned until Tuesday, the 27th June, at 11·30 A.M.

Done at Paris, the 23rd June, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*
HENRY A. HANNEN, *Acting Co-Secretary.*

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## Inclosure 5 in No. 93.

### *Protocole No.* 45.—*Séance du Mardi,* 27 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 27 Juin, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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## [English version.]

### *Protocol No.* 45.—*Meeting of Tuesday, June* 27, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling the *Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 27th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate :

(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*
HENRY A. HANNEN, *Acting Co-Secretary.*

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## Inclosure 6 in No. 93.

### *Protocole No.* 46.—*Séance du Mercredi,* 28 *Juin,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Mr. H. Cunynghame* reprend ses fonctions de Co-Secrétaire, qui avaient été exercées provisoirement par Mr. Henry Hannen.

*L'Honorable Edward J. Phelps* continue sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* poursuit son argumentation.

La séance est levée à 4 heures et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 28 Juin, 1893, et ont signé :

| | |
|---|---|
| Le Président .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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## [English version.]

### *Protocol No.* 46.—*Meeting of Wednesday, June* 28, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Mr. H. Cunynghame* resumed his duties of Co-Secretary, which had been fulfilled temporarily by Mr. Henry Hannen.

*The Honourable Edward J. Phelps* continued his argument.

At 1·30 the Tribunal took a recess.

On reassembling, the *Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.

Done at Paris, the 28th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, *Co-Secretaries.*

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### Inclosure 7 in No. 93.

### *Protocole No. 47.—Séance du Jeudi, 29 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au Lundi, 3 Juillet, à 11 heures 30.

Ainsi fait à Paris, le 29 Juin, 1893, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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### [English version.]

### *Protocol No. 47.—Meeting of Thursday, June 29, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling the *Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned until Monday, the 3rd July, at 11·30 A.M.

Done at Paris, the 29th June, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, *Co-Secretaries.*

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### No. 94.

### *Mr. Tupper to the Earl of Rosebery.—(Received July 26.)*

My Lord, *Paris, July 25, 1893.*

I HAVE the honour to transmit to your Lordship copies of the official Protocol No. 41 of the proceedings before the Behring Sea Tribunal of Arbitration.

I have, &c.,
(Signed) CHARLES H. TUPPER.

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### Inclosure in No. 94.

### *Protocole No. 41.—Séance du Mardi, 20 Juin, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*Sir Richard Webster* continue son argumentation.

L'Agent de Sa Majesté Britannique dépose devant le Tribunal, au nom de son Gouvernement, un projet de Règlements dont le texte suit:—

### " *Règlements.*

"1. Tout bâtiment employé à la chasse des phoques en mer devra se pourvoir de licences à l'un des ports indiqués ci-dessous :—

" Victoria, dans la Province de la Colombie Britannique ;
" Vancouver, dans la Province de la Colombie Britannique ;
" Port Townsend, dans le Territoire de Washington, États-Unis ;
" San-Francisco, dans l'État de Californie, États-Unis.

" 2. Ces licences ne seront accordées qu'à des bâtiments à voiles.

" 3. Il sera établi autour des Iles Pribiloff une zone de 20 milles à l'intérieur de laquelle la chasse des phoques sera interdite en toute saison.

" 4. Il y aura, du 15 Septembre au 1^er^ Juillet, une saison de clôture, pendant laquelle la chasse des phoques ne sera point permise dans la Mer de Behring.

" 5. Il ne pourra être fait usage ni de carabines ni de filets pour la chasse des phoques en mer.

" 6. Tout bâtiment employé à la chasse des phoques devra porter un pavillon distinctif.

" 7. Les patrons des bâtiments employés à la chasse des phoques devront tenir un journal ou ils relèveront avec soin les époques et les emplacements de la chasse, le nombre et le sexe des phoques capturés ; ils devront tenir un journal ou ils relèveront avec soin les époques et les emplacements de la chasse, le nombre et le sexe des phoques capturés ; ils devront faire figurer un extrait dudit journal dans leur journal de bord.

" 8. Les licences tomberont en déchéance en cas d'infraction auxdits Règlements."

La séance est suspendue à 1 heure 30.

A la reprise, *Sir Richard Webster* reprend et achève sa plaidoirie.

L'Agent de Sa Majesté Britannique dépose alors devant le Tribunal le document ci-dessous, qu'il présente, d'accord avec l'Agent des États-Unis, pour être substitué aux documents soumis antérieurement au Tribunal relativement aux Conclusions de fait :—

" *Conclusions de fait proposées par l'Agent de la Grande-Bretagne, acceptées par l'Agent des États-Unis, qui en admet l'exactitude, et soumises à l'examen du Tribunal d'Arbitrage.*

" 1. Que les diverses visites et saisies de navires ou de marchandises et les différentes arrestations de patrons et d'équipages, mentionnées respectivement dans l'Annexe au Mémoire Britannique, pages 1 à 60 inclusivement, ont été faites par autorité du Gouvernement des États-Unis. Les questions se rapportant à la valeur desdits navires ou de leur contenu, ensemble ou séparément, et la question de savoir si les navires désignés dans l'Annexe au Mémoire Britannique, ou certains d'entre eux, étaient, en totalité ou en partie, la propriété de citoyens des États-Unis, ont été retirées et n'ont pas été l'objet de l'examen du Tribunal, sous cette réserve que les États-Unis garde le droit de soulever ces questions ou quelqu'une d'entre elles, s'ils le jugent à propos, dans toute négociation ultérieure pouvant engager la responsabilité du Gouvernement des États-Unis, en ce qui touche le payement des sommes mentionnées dans l'Annexe au Mémoire Britannique.

" 2. Que les susdites saisies, sauf en ce qui concerne le "Pathfinder," saisi à Neah Bay, ont été effectuées dans la Mer de Behring, aux distances de la côte mentionnées au Tableau ci-annexé, sous la lettre (C).

" 3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avaient reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après (Annexe A), les autres exemplaires desdites instructions étant conformes à ce modèle sur tous les points essentiels ; que, dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont une copie est annexée ci-dessous (Annexe B), les actes d'accusation déposés dans les autres procédures étant semblables à ce modèle, en tous points essentiels ; que les actes ou délits, allégués comme motifs de ces visites et saisies, ont été accompli ou commis dans la Mer de Behring, aux distances de la côte ci-dessus indiquées ; et que dans tous les cas où une condamnation a été prononcée, excepté ceux où les navires ont été relâchés après condamnation, la saisie a été approuvée par le Gouvernement des États-Unis ; et que, dans les cas où les navires ont été relâchés, la saisie avait été opérée par autorité du Gouvernement des États-Unis, que les amendes et emprisonnements susdits ont été prononcés à raison d'infractions aux lois nationales des Etats-Unis, infractions toutes commises dans la Mer de Behring aux distances de la côte ci-dessus indiquées.

"4. Que les différents ordres mentionnés dans l'Annexe ci-jointe sous la lettre (C), enjoignant à certains navires de quitter la Mer de Behring ou de ne pas y entrer, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient, toutes les fois qu'ils ont donné ces ordres, des instructions conformes à celles mentionnées ci-dessus, sous le No. 3, et que les navires qui ont reçu ces injonctions étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse, et que cette façon de procéder a été sanctionnée par le Gouvernement des États-Unis.

"5. Que les Cours de District des États-Unis devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires saisis dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne, pages 1 à 60 inclusivement, avaient tous droits de juridiction et pouvoirs appartenant aux Cours d'Amirauté, y compris la juridiction de Tribunaux de Prises, mais que, dans chaque cas particulier, la sentence prononcée par la Cour s'appuyait sur les causes mentionnées dans l'acte d'accusation."

## Annexes (A) et (B).

(Pour le texte de ces Annexes, voir le Protocole 35, Annexes (A) et (B) aux Conclusions de fait présentées par l'Agent des États-Unis.)

## Annexe (C).

La Table ci-dessous contient les noms des navires Britanniques employés à la chasse des phoques, qui ont été saisis ou avertis par les croiseurs du service des Douanes des États-Unis, de 1886 à 1890, et la distance approximative de la terre où ces saisies ont eu lieu, Ces distances sont indiquées, en ce qui concerne les navires "Carolena," "Thornton," et "Onward," d'après le témoignage du Commandant Abbey, de la Marine des États-Unis. (Voir 50<sup>e</sup> Congrès; 2<sup>e</sup> Session; Sénat; Documents Exécutifs, No. 106, pp. 20, 30, et 40.) Elles sont indiquées, en ce qui concerne les navires "Anna Beck," "W. P. Sayward," "Dolphin," et "Grace," d'après le témoignage du Capitaine Shepard, de la Marine du Trésor des Etats-Unis. (Livre Blue, États-Unis, No. 2, 1890, pp. 80–82. Voir Appendice au Mémoire Britannique, vol. iii.)

| Nom du Navire. | Date de la Saisie. | Distance approximative de Terre au moment de la Saisie. | Navire des États-Uuis qui a fait la Saisie. |
|---|---|---|---|
| Carolena | 1er Août, 1886 | 75 milles | Corwin. |
| Thornton | 1er Août, 1886 | 70 „ | Idem. |
| Onward | 2 Août, 1886 | 115 „ | Idem. |
| Favourite | 2 Août, 1886 | Averti par le "Corwin," à peu près dans la même position que le "Onward." | |
| Anna Beck | 2 Juillet, 1887 | 66 milles | Rush. |
| W. P. Seyward | 9 Juillet, 1887 | 59 „ | Idem. |
| Dolphin | 12 Juillet, 1887 | 40 „ | Idem. |
| Grace | 17 Juillet, 1887 | 96 „ | Idem. |
| Alfred Adams | 10 Août, 1887 | 62 „ | Idem. |
| Ada | 25 Août, 1887 | 15 „ | Bear. |
| Triumph | 4 Août, 1887 | Averti par le "Rush" de ne pas entrer dans la Mer de Behring. | |
| Juanita | 31 Juillet, 1889 | 66 milles | Rush. |
| Pathfinder | 29 Juillet, 1889 | 50 „ | Idem. |
| Triumph | 11 Juillet, 1889 | Averti par le "Rush" d'avoir à quitter la Mer de Behring.—Position au moment de l'avertissement: (?) | |
| Black Diamond | 11 Juillet, 1889 | 35 milles | Idem. |
| Lily | 6 Août, 1889 | 66 „ | Idem. |
| Ariel | 30 Juillet, 1889 | Averti par le "Rush" d'avoir à quitter la Mer de Behring. | |
| Kate | 13 Août, 1889 | Averti par le "Rush" d'avoir à quitter la Mer de Behring. | |
| Minnie | 15 Juillet, 1889 | 65 milles | Idem. |
| Pathfinder | 27 Mars, 1890 | Saisi dans la Baie de Neah.* | Corwin. |

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* La Baie de Neah est située dans l'État de Washington, et le "Pathfinder" y a été saisi, du chef de délits commis par lui dans la Mer de Behring l'année précédente. Ce bâtiment fut relâché deux jours plus tard.

*Mr. Christopher Robinson* commence ensuite son argumentation sur la question des Règlements.

La séance est levée à 4 heures et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 20 Juin, 1892, et ont signé:

| | |
|---|---|
| Le Président.. .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No. 41.—Meeting of Tuesday, June 20, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*Sir Richard Webster* continued his argument.

The Agent of Her Britannic Majesty laid before the Tribunal a scheme of Regulations worded as follows:—

"*Regulations.*

"1. All vessels engaging in pelagic sealing shall be required to obtain licences at one or other of the following ports:—

"Victoria, in the Province of British Columbia.

"Vancouver, in the Province of British Columbia.

"Port Townsend, in Washington Territory, in the United States.

"San Francisco, in the State of California, in the United States.

"2. Such licences shall only be granted to sailing-vessels.

"3. A zone of 20 miles around the Pribyloff Islands shall be established, within which no seal hunting shall be permitted at any time.

"4. A close season, from the 15th September to the 1st July, shall be established, during which no pelagic sealing shall be permitted in Behring Sea.

"5. No rifles or nets shall be used in pelagic sealing.

"6. All sealing-vessels shall be required to carry a distinguishing flag.

"7. The masters in charge of sealing-vessels shall keep accurate logs as to the times and places of sealing, the number and sex of the seals captured, and shall enter an abstract thereof in their official logs.

"8. Licences shall be subject to forfeiture for breach of above Regulations."

At 1·30, the Tribunal took a recess.

On reassembling, *Sir Richard Webster* resumed and concluded his argument.

The Agent of Her Britannic Majesty then presented to the Tribunal the following paper, which by agreement with the Agent of the United States, was submitted as a substitute for the papers heretofore presented as to Findings of fact:—

"*Findings of fact proposed by the Agent of Great Britain, and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, p. 1 to 60 inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from, and have not been considered by, the Tribunal, it being understood that it is open to the United States to raise these questions or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

"2. That the seizures aforesaid, with the exception of the "Pathfinder," seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto, marked (C).

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were made, from the Executive Department of the Government of the

United States, instructions, a copy of one of which is annexed hereto, marked (A), and that the others were in all substantial respects the same: that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B) and that the libels in the other proceedings were in all substantial respects the same: that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distance from shore aforesaid: and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released, the seizure was made by the authority of the United States. That the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid.

"4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea, were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3, above proposed, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

"5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60 inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the Prize Jurisdiction; but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel."

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### Annexes (A) and (B).

(For the text of these Annexes, see Protocol 35, Annexes (A) and (B) to the Findings of fact submitted by the Agent of the United States.)

### Annex (C).

The following Table shows the names of the British sealing-vessels seized or warned by United States revenue cruizers, 1886–90, and the approximate distance from land when seized. The distances assigned in the cases of the "Carolena," "Thornton," and "Onward" are on the authority of United States' Naval Commander Abbey. (See 50th Congress, 2nd Session, Senate Executive Documents, No. 106, pp. 20, 30, and 40.) The distances assigned in the cases of the "Anna Beck," "W. P. Sayward," "Dolphin," and "Grace" are on the authority of Captain Shepard, United States' Royal Marine. (Blue Book, United States, No. 2, 1890, pp. 80, 82. See Appendix, vol. iii.)

| Name of Vessel. | Date of Seizure. | Approximate distance from Land when seized. | United States' Vessel making Seizure. |
|---|---|---|---|
| Carolena | August 1, 1886 | 75 miles | Corwin. |
| Thornton | August 1, 1886 | 70 ,, | Corwin. |
| Onward | August 2, 1886 | 115 ,, | Corwin. |
| Favourite | August 2, 1886 | Warned by "Corwin" in about same position as "Onward," | |
| Anna Beck | July 2, 1887 | 66 miles | Rush. |
| W. P. Sayward | July 9, 1887 | 59 ,, | Rush. |
| Dolphin | July 12, 1887 | 40 ,, | Rush. |
| Grace | July 17, 1887 | 96 ,, | Rush. |
| Alfred Adams | August 10, 1887 | 62 ,, | Rush. |
| Ada | August 25, 1887 | 15 ,, | Bear. |
| Triumph | August 4, 1887 | Warned by "Rush" not to enter Behring Sea. | |
| Juanita | July 31, 1889 | 66 miles | Rush. |
| Pathfinder | July 29, 1889 | 50 ,, | Rush. |
| Triumph | July 11, 1889 | Ordered out of Behring Sea by "Rush. (?) As to position when warned. | |
| Black Diamond | July 11, 1889 | 35 miles | Rush. |
| Lily | August 6, 1889 | 66 ,, | Rush. |
| Ariel | July 30, 1889 | Ordered out of Behring Sea by "Rush." | |
| Kate | August 13, 1889 | Ditto. | Rush. |
| Minnie | July 15, 1889 | 65 miles | Rush. |
| Pathfinder | March 27, 1890 | Seized in Neah Bay* | Corwin. |

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* Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

*Mr. Christopher Robinson* then began his argument on the question of Regulations.

At 4 P.M. the Tribunal adjourned to the next day, at 11·30 A.M.

Done at Paris, the 20th June, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States.. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, *Co-Secretary.*
HENRY A. HANNEN, *Acting Co-Secretary.*

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## No. 95.

### *Mr. Tupper to the Earl of Rosebery.—(Received July 26.)*

My Lord, *Paris, July* 25, 1893.

I HAVE the honour to report that on the close of the United States' argument on the 8th instant, I took immediate steps for dispensing with the services of as many as possible of the staff employed here during this Arbitration.

Mr. Piggott and Mr. Froude accordingly left on the 9th instant.

In consequence, however, of the necessity of having in readiness further information on certain points connected with seal-life, I deemed it advisable to retain Dr. Dawson's services for a short period longer. I also thought it best that Mr. Charles Russell should remain for the purpose of assisting Dr. Dawson, and of finishing the revision of the shorthand notes.

Dr. Dawson having completed his work left here on the 21st instant, and Mr. Russell took his departure on the following day.

The only members of the staff now remaining here are Mr. Maxwell and Mr. Pope.

I have, &c.,
(Signed) CHARLES H. TUPPER.

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## No. 96.

### *Mr. Tupper to the Earl of Rosebery.—(Received August 5.)*

My Lord, *Paris, August* 4, 1893.

I HAVE the honour to transmit copies of the official Protocols Nos. 48, 49, 50, 51, 52, and 53, recording the proceedings before the Behring Sea Arbitration Tribunal.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## Inclosure 1 in No. 96.

### *Protocole No.* 48.—*Séance du Lundi,* 3 *Juillet,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend sa plaidoirie.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.

Ainsi fait à Paris, le 3 Juillet, 1893, et ont signé:

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

[English version.]

*Protocol No. 48.—Meeting of Monday, July 3, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.
*The Honourable Edward J. Phelps* resumed his argument.
At 1·30 the Tribunal took a recess.
On reassembling, *the Honourable Edward J. Phelps* continued his argument.
At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.
Done at Paris, the 3rd July, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 2 in No. 96.

*Protocole No. 49.—Séance du Mardi, 4 Juillet, 1893.*

LE Tribunal s'est réuni at 11 heures 30, tous les Arbitres étant présents.
*L'Honorable Edward J. Phelps* reprend son argumentation.
La séance est suspendue à 1 heure 30.
A la reprise, *l'Honorable Edward J. Phelps* continue sa plaidoirie.
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.
Ainsi fait à Paris, le 4 Juillet, 1893, et ont signé:

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

*Protocol No. 49.—Meeting of Tuesday, July 4, 1893.*

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.
*The Honourable Edward J. Phelps* resumed his argument.
At 1·30 the Tribunal took a recess.
On reassembling, *the Honourable Edward J. Phelps* continued his argument.
At 4 P.M the Tribunal adjourned to the next day at 11·30 A.M.
Done at Paris, the 4th July, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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Inclosure 3 in No. 96.

*Protocole No. 50.—Séance du Mercredi, 5 Juillet, 1893.*

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.
*L'Honorable Edward J. Phelps* continue sa plaidoirie.
La séance est suspendue à 1 heure 30.
A la reprise, *l'Honorable Edward J. Phelps* poursuit son argumentation.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.
Ainsi fait à Paris, le 5 Juillet, 1893, et ont signé :

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 50.—*Meeting of Wednesday, July* 5, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.
*The Honourable Edward J. Phelps* resumed his argument.
At 1·30 the Tribunal took a recess.
On reassembling, *the Honourable Edward J. Phelps* continued his argument.
At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.
Done at Paris, the 5th July, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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### Inclosure 4 in No. 96.

### *Protocole No.* 51.—*Séance du Jeudi*, 6 *Juillet*, 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.
*L'Honorable Edward J. Phelps* reprend sa plaidoirie.
La séance est suspendue à 1 heure 30.
A la reprise, *l'Honorable Edward J. Phelps* continue son argumentation.
A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 11 heures 30.
Ainsi fait à Paris, le 6 Juillet, 1893, et ont signé :

Le Président.. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

### *Protocol No.* 51.—*Meeting of Thursday. July* 6, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.
*The Honourable Edward J. Phelps* resumed his argument.
At 1·30 the Tribunal took a recess.
On reassembling, *the Honourable Edward J. Phelps* continued his argument.
At 4 P.M. the Tribunal adjourned to the next day at 11·30 A.M.
Done at Paris, the 6th July, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:
(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

## Inclosure 5 in No. 96.

### *Protocole No. 52.—Séance du Vendredi, 7 Juillet,* 1893.

LE Tribunal s'est réuni à 11 heures 30, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend son argumentation.

La séance est suspendue à 1 heure 30.

A la reprise, *l'Honorable Edward J. Phelps* continue sa plaidoirie.

A 4 heures la séance est levée et le Tribunal s'ajourne au lendemain à 2 heures de l'après-midi.

Ainsi fait à Paris, le 7 Juillet, 1893, et ont signé:

| | |
|---|---|
| Le Président .. .. .. | ALPH. DE COURCEL. |
| L'Agent des États-Unis .. .. | JOHN W. FOSTER. |
| L'Agent de la Grande-Bretagne .. | CHARLES H. TUPPER. |
| Le Secrétaire .. .. .. | A. IMBERT. |

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[English version.]

### *Protocol No. 52.—Meeting of Friday, July* 7, 1893.

THE Tribunal assembled at 11·30 A.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* resumed his argument.

At 1·30 the Tribunal took a recess.

On reassembling, *the Honourable Edward J. Phelps* continued his argument.

At 4 P.M. the Tribunal adjourned to the next day at 2 P.M.

Done at Paris, the 7th July, 1893, and signed:

| | |
|---|---|
| The President .. .. .. | ALPH. DE COURCEL. |
| The Agent for the United States .. | JOHN W. FOSTER. |
| The Agent for Great Britain .. | CHARLES H. TUPPER. |
| The Secretary .. .. .. | A. IMBERT. |

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, H. CUNYNGHAME, } *Co-Secretaries.*

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## Inclosure 6 in No. 96.

### *Protocole No. 53.—Séance du Samedi, 8 Juillet,* 1893.

LE Tribunal s'est réuni à 2 heures, tous les Arbitres étant présents.

*L'Honorable Edward J. Phelps* reprend et achève sa plaidoirie.

*Sir Charles Russell*, au nom de ses collègues, remercie les membres du Tribunal de la bienveillante attention avec laquelle ils ont suivi ces longs débats. Il remercie également le Secrétaire, les Co-Secrétaires, et Secrétaires-Adjoints du Tribunal, ainsi que les Secrétaires particuliers des Arbitres de leur obligeant et utile concours.

*L'Honorable Edward J. Phelps* s'associe aux paroles de Sir Charles Russell, au nom des Conseils du Gouvernement des États-Unis. Il se fait l'interprète de tous ses collègues en rendant hommage à la compétence et à la courtoisie avec lesquelles le Président a dirigé les discussions et renouvelle l'expression de leur gratitude pour l'hospitalité de la France.

*Le Président* annonce alors que le Tribunal va prendre l'affaire en délibéré.

*Sir Charles Russell* et *l'Honorable Edward J. Phelps* témoignent le désir qu'au cas où le Tribunal, durant ses délibérations, croirait devoir s'adresser aux Conseils pour obtenir d'eux quelque éclaircissement, la demande et la réponse aient lieu par écrit.

*Le Président* répond que le Tribunal tiendra compte de ce désir dans la mesure du possible, sans renoncer toutefois au droit que lui donne le Traité de requérir toutes informations orales, écrites ou imprimées qu'il jugera utile.

L'Agent de Sa Majesté Britannique fait connaître qu'il restera à Paris, ainsi que l'Agent des États-Unis, à la disposition du Tribunal.

A 4 heures la séance est levée.

Ainsi fait à Paris, le 8 Juillet, 1893, et ont signé:

Le Président .. .. .. .. ALPH. DE COURCEL.
L'Agent des États-Unis .. .. JOHN W. FOSTER.
L'Agent de la Grande-Bretagne .. CHARLES H. TUPPER.
Le Secrétaire .. .. .. A. IMBERT.

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[English version.]

*Protocol No. 53.—Meeting of Saturday, July* 8, 1893.

THE Tribunal assembled at 2 P.M., all the Arbitrators being present.

*The Honourable Edward J. Phelps* continued and concluded his argument.

*Sir Charles Russell*, in the name of his colleagues, thanked the members of the Tribunal for the kind attention with which they had followed the lengthy debates. He also thanked the Secretary, Co-Secretaries, and Assistant Secretaries of the Tribunal, as well as the Private Secretaries of the Arbitrators, for their obliging and useful assistance.

*The Honourable Edward J. Phelps* indorsed the remarks of Sir Charles Russell in the name of Counsel for the Government of the United States. He referred, on behalf of all his colleagues, to the ability and courtesy with which the President had directed the discussions, and he renewed the expression of their gratitude for the hospitality of France.

*The President* thereupon announced that the Tribunal would take the case under consideration.

*Sir Charles Russell* and *the Honourable Edward J. Phelps* expressed their desire that in case the Tribunal, during its deliberations, should find it necessary to obtain from Counsel any further information, the request for such information and the answer thereto should be in writing.

The President replied that the Tribunal would take note of the request as far as possible, without however surrendering the right given it by the Treaty of requiring all such information, whether oral, written, or printed, as it might deem useful.

The Agent of Her Britannic Majesty announced that the Agent of the United States and he would remain in Paris at the disposition of the Tribunal.

At 4 P.M. the Tribunal adjourned.

Done at Paris, the 8th July, 1893, and signed:

The President .. .. .. ALPH. DE COURCEL.
The Agent for the United States .. JOHN W. FOSTER.
The Agent for Great Britain .. CHARLES H. TUPPER.
The Secretary .. .. .. A. IMBERT.

Translation certified to be accurate:

(Signed) A. BAILLY-BLANCHARD, } *Co-Secretaries.*
H. CUNYNGHAME, }

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No. 97.

*Mr. Tupper to the Earl of Rosebery.—(Received August* 14.)

(Extract.) *Paris, August* 12, 1893.

WITH reference to your Lordship's despatch of the 15th April last and previous correspondence, I have the honour to transmit herewith a copy of a letter which I addressed to Baron de Courcel on the subject of the withdrawal of the United States' Agent from the joint arrangement for preparing and printing short-hand notes of the proceedings before the Tribunal.

I communicated a copy of this letter to Mr. Foster.

It appeared to me that, as these reports had been of obvious utility to the Arbitrators, the cost of their production might fairly be included among the expenses which, under Article XII of the Treaty of Arbitration, are to be shared in equal moieties by the two Governments, and, having failed to agree with the United States' Agent on the subject, I deemed it advisable to obtain an expression of opinion from the Tribunal itself.

Mr. Foster, on receiving copy of my letter to Baron de Courcel, wrote in his turn a note to his Excellency (which he communicated to me, and of which a copy is inclosed), setting forth his reasons for dissenting from my views on the subject.

Baron de Courcel has now replied, and I have the honour to inclose an extract from his letter, the rest of which deals with another subject. Your Lordship will observe that the Arbitrators establish the utility of these reports. At the same time they do not consider themselves competent to examine by whom, and in what manner, the expenses ought to be met.

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### Inclosure 1 in No. 97.

### *Mr. Tupper to Baron de Courcel.*

Dear Baron de Courcel, *Paris, August* 8, 1893.

YOU will remember that shortly after the commencement of the proceedings before the Tribunal the United States' Government withdrew from the joint arrangement for preparing and printing short-hand notes of the oral arguments.

The correspondence which passed on this subject between the United States' Agent and myself, and a statement showing General Foster's reasons for withdrawing were laid before the Tribunal, and will be found on pp. 507 and 508 of Part III of the Reports of Proceedings.

Since the withdrawal of the United States' Government, which was finally announced on the 12th April, the reports have been continued under the supervision of the British staff, and at the sole expense of Her Majesty's Government.

In recommending this course to Lord Rosebery I was to a large extent influenced by the consideration that verbatim reports of the daily proceedings would be not only convenient, but necessary, for the members of the Tribunal. From some expressions used by yourself at the meeting of the 7th April (see Report of Proceedings, Part I, p. 148), I feel sure that you have appreciated their usefulness, and the constant reference which has been made to them by the other Arbitrators confirms my opinion as to their general utility to the Tribunal.

Under the circumstances, I venture to suggest through you that the Arbitrators should consider whether the cost of preparing these reports might not be fairly included as one of the expenses of the Tribunal. The XIIIth Article of the Treaty requires the Arbitrators "to keep an accurate record of their proceedings, and to employ the necessary officers to assist them," and in Article XII it is stated that after the payment by each Government of remuneration to their respective Agents and Counsel, and of the cost of preparing and submitting their several Cases, "All other expenses connected with the Arbitration shall be defrayed by the two Governments in equal moieties."

In case this suggestion should meet with the approval of the Arbitrators, it would of course be understood that Her Majesty's Government would bear their share of the expenses incurred by the United States in producing the reports of the speeches of their Counsel which they have presented to the Tribunal, in addition to those supplied by the British side.

I regret that I have been unable, as shown in the correspondence referred to above, to come to any agreement with the United States' Agent on the subject, and this must be my excuse for troubling you with this reference.

I have forwarded a copy of this letter to Mr. Foster.

I am, &c.
(Signed) CHARLES H. TUPPER.

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### Inclosure 2 in No. 97.

*Mr. Foster to Baron de Courcel.*

Dear Sir, *Paris, August* 9, 1893.

I HAVE received from the Honourable C. H. Tupper, Agent of the British Government, a copy of a communication dated the 8th instant, and addressed by him to you, containing a request respecting the expenses incurred by him in preparing a report of the oral argument of Counsel before the Tribunal. This communication compels me to address you on the subject.

The suggestion of the Agent of the British Government seems to be that the Arbitrators should in some manner, directly or indirectly, by their own action, impose upon the Government of the United States a part of the expense incurred by him in printing a report of the proceedings before the Tribunal, including the arguments of Counsel. This seems to me to be very extraordinary, and I can in no manner assent to it.

If the expense had been incurred in pursuance of some agreement between the parties, there would have been no occasion to trouble the Tribunal with any suggestion concerning its payment. If it had been incurred in pursuance of some direction or authority of the Tribunal, it would be very proper for that body to consider how it should be defrayed.

But it has been incurred in neither of these modes. This report has been made solely under the authority of the Agent of Great Britain without my authority or consent. It has never been subjected to any revision by me or any one under my authority, has never been furnished to me or to the Counsel of the United States, and is, so far as it has been made known to me by the use made of it in argument by the Counsel for the British Government erroneous and imperfect. I cannot therefore consent to its adoption as a report of the proceedings of, and arguments before, the Tribunal.

I was not unwilling at the outset of the sessions that a joint arrangement should be made, whereby an accurate report of the proceedings of, and arguments before, the Tribunal should be furnished for the use of the Arbitrators and Counsel, as well as for the purposes of a permanent record. It is not necessary here to enter upon any statement of the circumstances which led to a failure to make such an arrangement. It is enough to say that to call upon the United States to contribute to the expense incurred would imply that the Agent of Great Britain had the right, after failing to secure the assent of the United States to the plan of reporting proposed by him, to proceed and execute that plan without the assent of the United States, and without any supervision on its part, and that the United States was bound to contribute to the expense although it had received no copies of the full report.

It seems to me quite unnecessary to dwell upon the incorrectness of such a position.

I am, &c.
(Signed) JOHN W. FOSTER.

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### Inclosure 3 in No. 97.

*Baron de Courcel to Mr. Tupper.*

(Extract.) *Paris, August* 11, 1893.

DURING a private meeting held by the members of the Tribunal of Arbitration I submitted to my colleagues the note which you were so kind as to address to me concerning the short-hand reports of the Tribunal's proceedings and the mode of defraying the expense necessary for getting up those reports.

My colleagues concurred with me that those reports had been practically very useful to all of us, and had helped us in our work, and that we were under real obligations to all the persons who had taken the trouble to prepare such reports. As to the question of the cost thereby incurred, the Arbitrators did not deem themselves competent to examine by whom, and in what manner, it ought to be met.

## No. 98.

*Mr. Tupper to the Earl of Rosebery.*—(*Received August* 16.)

My Lord, *Paris, August* 15, 1893.

I HAVE the honour to transmit to your Lordship the decision of the Behring Sea Tribunal of Arbitrators which has been delivered to me this day in accordance with Article XI of the Treaty of the 29th February, 1892.*

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 99.

*Mr. Tupper to the Earl of Rosebery.*—(*Received August* 16.)

My Lord, *Paris, August* 15, 1893.

THE final duty now devolves upon me as Her Majesty's Agent to record an official acknowledgment of the services of those gentlemen with whom I have been associated.

I esteem it a privilege to testify to the great value of the assistance which I have derived from the support and counsel of Sir Charles Russell, whose masterly argument will ever remain a monument of learning and forensic skill. His conduct of the case of the Government of the Queen left nothing to be desired.

The Attorney-General was ably supported by Sir Richard Webster. I may be permitted to indorse the sentiments so happily expressed by the President of the Tribunal at the close of Sir Richard's argument.

"Sir Richard," said Baron de Courcel, "we thank you for the very substantial and useful observations with which you have supplemented the argument of Sir Charles Russell. We knew how much we were indebted to you already for the elaborate study you have made of this case on behalf of Great Britain, and I, for one, have very much admired the unrestricted and friendly co-operation of yesterday's Attorney-General with to-day's Attorney-General. The country is indeed to be envied where party spirit admits of such brotherly association when the national interest is at stake."

Mr. Christopher Robinson assisted in a signal manner, and fully justified his special nomination by the Government of Canada.

Although I propose in this despatch to confine my observations chiefly to those who attended the Arbitration proceedings at Paris, I wish to refer to the late Honourable W. H. Cross, one of the Counsel originally employed on behalf of Her Majesty's Government. His untimely death is deeply to be deplored. Mr. Cross' ability I fully recognized and appreciated, while his genial disposition had endeared him to all his associates.

I have already alluded to the services of Mr. M. H. Box, and I have only to add that those of Mr. F. T. Piggott were equally valuable.

Sir George Baden-Powell and Dr. G. M. Dawson have been constantly consulted, and their advice has been of great value.

Dr. Dawson attended at Paris. It gives me pleasure to bear witness to his indefatigable industry, which was coupled with a complete mastery of the subject of seal life.

Mr. Maxwell, as Secretary of my Staff, made himself exceedingly useful in every way, and I gratefully acknowledge his kindly and ready assistance. His intimate acquaintance with the French language has been most convenient to me, as well as to the public advantage.

Mr. Charles Russell's services have also been of great benefit. In addition to the important work which came regularly under his attention as solicitor, he, with the assistance of Mr. Piggott, undertook the laborious task of revising and superintending the printing of the stenographic notes of the proceedings before the Tribunal.

Mr. Anderson, of the Colonial Office, who, as your Lordship is aware, was conversant with all the facts of this case, rendered material aid.

I have also to commend the diligence and zeal evinced by Mr. Ashley

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* For copy of the decision inclosed in this despatch see "United States No. 10 (1893)."

Froude, C.M.G., Mr. Joseph Pope, and Mr. James Macoun, and to express my appreciation of the readiness with which these gentlemen have at all times striven to facilitate the business of the Agency. In fact, the members of the General Staff have vied with one another in their endeavour to promote the common cause.

The services rendered by Mr. G. F. Fairholme, of the Foreign Office, in the matter of the Russian translations, call for special mention. I may also refer to the excellent work done by him, as well as by Mr. H. Farnall and Mr. E. A. Crowe, as French translators generally, which has evoked from the President of the Tribunal an expression of admiration.

In thus acknowledging the valuable aid which I have received from those more immediately connected with the Arbitration at Paris, I am not unmindful of the fact that there are others, whether serving under your Lordship or the Secretary of State for the Colonies, or in the employ of the Canadian Government, whose assistance in the laborious work of the preparation of this case merits recognition.

As Minister of Marine and Fisheries of Canada, it will be my pleasure and my duty to represent to his Excellency the Governor-General with more particularity my sense of the important services which have been rendered by officers of the Canadian Civil Service, whose names do not appear in this despatch. In the meantime, I content myself with this general allusion.

I cannot, however, close these observations without expressing to your Lordship my warm appreciation of the advantage which I have derived from association with Sir Thomas Sanderson, of whose knowledge and experience I have fully availed myself at every stage of the case. Indeed, I find a difficulty adequately to express my gratitude to him for the readiness he has ever shown to assist me in the performance of those honourable duties with which I have been charged.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 100.

*Mr. Tupper to the Earl of Rosebery.—(Received August 16.)*

My Lord, *Paris, August* 15, 1893.

I HAVE the honour to report that the decision of the Tribunal having been delivered to me, I propose to leave Paris this day, and to sail for Canada on the 17th instant.

I have asked Mr. Maxwell to remain here for a few days to wind up the business of this Agency.

I have, &c.
(Signed) CHARLES H. TUPPER.

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## No. 101.

*The Earl of Rosebery to the Marquis of Dufferin.*[*]

My Lord, *Foreign Office, August* 29, 1893.

THE Arbitrators appointed under the Treaty of Washington of the 29th February, 1892, for the examination of the various questions that had arisen in connection with the fur-seal fishing industry in parts of Behring Sea and the North Pacific Ocean, have pronounced and published their Award on the 15th instant.

I have now received the Queen's commands to request that your Excellency will convey to the President of the French Republic Her Majesty's acknowledgments of the great ability and unremitting attention displayed during the prolonged proceedings of the Tribunal by Baron de Courcel, the eminent Statesman nominated by the President as one of the Arbitrators on the Tribunal.

The examination of the voluminous documents laid before them, and the difficulties surrounding the questions on which they were occupied, have imposed on each one of the Arbitrators a considerable sacrifice of time and personal convenience and a large amount of personal labour.

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[*] Similar despatches were addressed to Her Majesty's Representatives at Rome, Stockholm, and Washington.

I request that you will submit to the President of the French Republic the hope of Her Majesty that her acknowledgements may be conveyed to Baron de Courcel for the valuable services which he has rendered on this occasion.

I am, &c.
(Signed) ROSEBERY.

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## No. 102.

*The Earl of Rosebery to the Marquis of Dufferin.*

My Lord, *Foreign Office, August* 29, 1893.

IN addition to the obligations conferred on this country by the President of the French Republic in the selection of an eminent Statesman to act as one of the Arbitrators on the Behring Sea Seal Fisheries question, the President and the Government of the French Republic have shown a marked courtesy and magnificent hospitality to the members of the Tribunal and to the British and American gentlemen who have been engaged in the proceedings before it.

I request that you will take a fitting opportunity of conveying to the President and to M. Develle the best acknowledgments of Her Majesty's Government for the attention and kindness shown to the British members of the Court of Arbitration during the prolonged period over which its sittings have extended. The reception accorded to these gentlemen has been mentioned by them with the warmest expressions of gratitude, and has been a cause of sincere gratification to the Queen and her Government as an evidence of cordiality, no less than of the generosity with which the French nation always treats its guests.

I am, &c.
(Signed) ROSEBERY.

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## No. 103.

*The Earl of Rosebery to Mr. Tupper.*

Sir, *Foreign Office, August* 29, 1893.

I HAVE to acknowledge the receipt of your despatch of the 15th instant, inclosing the Award delivered on that day by the Behring Sea Tribunal of Arbitration, and of your further despatch of the same date, in which you call attention to the services of the several gentlemen associated with you in the proceedings before the Tribunal.

I have received the Queen's commands to signify to you, and to those who have worked with you, Her Majesty's gracious approval of the zeal and ability with which you have maintained the interests of this country and of Her Majesty's subjects in the important matters which were submitted for decision.

I have conveyed to the Attorney-General and to Sir Richard Webster the cordial acknowledgments of Her Majesty's Government for the manner in which they have presented the Case of Her Majesty's Government before the Tribunal, and I must request you to offer the same acknowledgments on their behalf to Mr. C. Robinson, Q.C., of the Canadian Bar.

I note with entire sympathy and agreement the tribute which you pay to the ability of the late Mr. W. H. Cross, whose premature death was a subject of deep regret.

I have to request that you will assure Dr. Dawson of the great value attached by Her Majesty's Government to the assistance which he has rendered throughout the Arbitration, and their appreciation of the learning, ability, and patient industry which he has shown in collecting and placing at the disposal of those charged with the conduct of the British Case the information required for the elucidation of the various questions of geography and natural history involved in the argument.

I shall offer a similar acknowledgment to Sir G. Baden-Powell.

It has afforded me sincere gratification to read the testimony you bear to the efficient aid received by you from the other gentlemen employed at Paris, and to the assistance which has been rendered to you by various members of this Department.

I am, &c.
(Signed) ROSEBERY.

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## No. 104.

*The Earl of Rosebery to Lord Hannen.**

My Lord, *Foreign Office, August* 29, 1893.

THE labours of the Tribunal of Arbitration appointed under the Treaty of Washington of the 29th February, 1892, having been now closed, and their Award delivered on the 15th instant, I have received the Queen's commands to convey to you Her Majesty's acknowledgments for your services as one of the Arbitrators, and her appreciation of the zeal and ability you have shown in that office.

Her Majesty recognizes that your duties, involving as they have done the closest attention during a prolonged period of time, were undertaken at considerable personal inconvenience and from a strong sense of public duty.

I have pleasure in asking you to accept also the sincere thanks of Her Majesty's Government for the valuable services you have rendered to the country on this important occasion.

I am, &c.
(Signed) ROSEBERY.

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## No. 105.

*The Earl of Rosebery to Sir C. Russell.*†

Sir, *Foreign Office, August* 29, 1893.

THE proceedings of the Behring Sea Arbitration having now been concluded, and the Award having been delivered by the Arbitrators, I have much pleasure in offering to you the sincere thanks of Her Majesty's Government for the eminent services you have rendered in connection with the Arbitration, and in assuring you how greatly they appreciate the patience and industry shown in the preparation of the pleadings, and the signal ability with which the British Case has been argued by you as Her Majesty's Counsel before the Tribunal.

I am, &c.
(Signed) ROSEBERY.

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## No. 106.

*The Earl of Rosebery to Sir G. Baden-Powell.*

Sir, *Foreign Office, August* 29, 1893.

THE proceedings of the Behring Sea Arbitration having now been concluded, and the Award having been delivered, I have much pleasure in offering to you the best thanks of Her Majesty's Government for the valuable assistance which you have rendered during the preparation of the pleadings, by placing at the disposal of those charged with the conduct of the British Case your exceptional and extensive knowledge of the habits of the fur-seal, and of the various questions connected with the seal fishery.

Her Majesty's Government are fully sensible of the zeal and public spirit which you have shown in the discharge of this task, which was voluntarily undertaken by you, and of the amount of labour which it has entailed.

I am, &c.
(Signed) ROSEBERY.

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* Also to Sir J. Thompson.

† Also to Sir R. Webster.

## No. 107.

*Lord Hannen to the Earl of Rosebery.—(Received September* 8.)

My Lord, *49, Lancaster Gate, London, September* 6, 1893.

I AM honoured by your Lordship's letter of the 29th ultimo, in which you inform me that you have received the Queen's commands to convey to me Her Majesty's acknowledgments for my services as one of the Arbitrators under the Treaty of the 29th February, 1892. I desire to express my respectful gratitude for the gracious terms of approval with which those acknowledgments are accompanied. They will remain for me a source of legitimate pride to the end of my life. It is also a subject of great satisfaction to me that my services have been deemed worthy of the thanks of Her Majesty's Government. I trust that the labours I have been engaged in will prove beneficial, not only to this country on the present occasion, but to the interests of peace throughout the world.

I have, &c.
(Signed) HANNEN.

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## No. 108.

*Sir C. Russell to the Earl of Rosebery.—(Received September* 8.)

My Lord, *Lincoln's Inn, London, September* 8, 1893.

I BEG to acknowledge your Lordship's favour of the 28th ultimo, in which you are good enough to convey to me the thanks of Her Majesty's Government for my services in the Behring Sea Arbitration. I thank your Lordship; but I should like to be permitted to say how much the Counsel representing the interests of Great Britain were indebted to the gentlemen connected with the Foreign Office for most valuable help in their labours. I refer, I need scarcely say, in an especial manner to Sir Thomas Sanderson, whose wise counsel and criticism in the preparation of the Case, Counter-Case, and Argument we valued highly; but I refer also to the unremitting help and attention of Mr. R. P. Maxwell and of Mr. Ashley Froude.

I have, &c.
(Signed) C. RUSSELL.

UNITED STATES. No. 10 (1893).

# BEHRING SEA ARBITRATION.

# AWARD

OF THE

# TRIBUNAL OF ARBITRATION,

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED AT WASHINGTON ON THE 29th FEBRUARY, 1892, BETWEEN HER BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

*Presented to both Houses of Parliament by Command of Her Majesty.*
*August* 1893.

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# BEHRING SEA ARBITRATION.

## Award of the Tribunal of Arbitration, constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

*Mr. Tupper to the Earl of Rosebery.—(Received August* 16.)

My Lord, *Paris, August* 5, 1893.

I HAVE the honour to transmit to your Lordship the decision of the Behring Sea Tribunal of Arbitrators, which has been delivered to me this day in accordance with Article XI of the Treaty of the 29th February, 1892.

I have, &c.
(Signed) CHARLES H. TUPPER.

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Inclosure 1.

*Sentence du Tribunal d'Arbitrage constitué en vertu du Traité conclu à Washington, le* 29 *Février,* 1892, *entre les États-Unis d'Amérique et Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne et d'Irlande.*

ATTENDU que, par un Traité entre les États-Unis d'Amérique et la Grande-Bretagne, signé à Washington le 29 Février, 1892, et dont les ratifications par les Gouvernements des deux pays ont été echangées à Londres le 7 Mai, 1892, il a été, entre autres stipulations, convenu et réglé que les différends qui avaient surgi entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de Sa Majesté Britannique, au sujet des droits de juridiction des États-Unis dans les eaux de la Mer de Behring, et aussi relativement à la préservation des phoques à fourrure habitant ou fréquentant ladite mer et aux droits des citoyens et des sujets des deux pays en ce qui concerne la capture des phoques à fourrure se trouvant dans les dites eaux ou les fréquentant, seraient soumis à un Tribunal d'Arbitrage composé de sept Arbitres, qui seraient nommés de la manière suivante, savoir : deux Arbitres seraient désignés par le Président des Etats-Unis ; deux Arbitres seraient désignés par Sa Majesté Britannique ; son Excellence le Président de la République Française serait prié, d'un commun accord, par les Hautes Parties Contractantes de désigner un Arbitre ; Sa Majesté le Roi d'Italie serait prié de la même manière de désigner un Arbitre ; Sa Majesté le Roi de Suède et de Norvège serait prié de la même manière de désigner un Arbitre : les sept Arbitres ainsi nommés devant être des jurisconsultes d'une réputation distinguée dans leurs pays respectifs, et les Puissances auxquelles leur désignation serait remise devant être priées de choisir, autant que possible, des jurisconsultes sachant la langue Anglaise ;

Et attendu qu'il a été pareillement convenu, par l'Article II du dit Traité, que les Arbitres se réuniraient à Paris dans les vingt jours qui suivraient la remise des Contre-Mémoires mentionnés à l'Article IV, qu'ils examineraient et décideraient avec impartialité et soin les questions qui leur étaient ou qui leur seraient soumises dans les conditions prévues par ledit Traité, de la part des Gouvernements des États-Unis et de Sa Majesté Britannique respectivement, et que toutes les questions examinées par le Tribunal, y compris la sentence finale, seraient décidées par les Arbitres à la majorité absolue des voix ;

Et attendu que, par l'Article VI du dit Traité, il a été pareillement convenu ce qui suit :—

"En vue de la décision des questions soumises aux Arbitres, il est entendu que les cinq points suivants leur seront soumis, afin que leur sentence comprenne une décision distincte sur chacun desdits cinq points, savoir :—

"1. Quelle juridiction exclusive dans la mer aujourd'hui connue sous le nom de Mer de Behring et quels droits exclusifs sur les pêcheries de phoques dans cette mer la Russie a-t-elle affirmés et exercés avant et jusqu'à l'époque de la cession de l'Alaska aux États-Unis ?

"2. Jusqu'à quel point la revendication de ces droits de juridiction en ce qui concerne les pêcheries de phoques a-t-elle été reconnue et concédée par la Grande-Bretagne ?

"3. L'espace de mer aujourd'hui connu sous le nom de Mer de Behring était-il compris dans l'expression 'Océan Pacifique,' telle qu'elle a été employée dans le texte du Traité conclu en 1825 entre la Grande-Bretagne et la Russie, et quels droits, si droits il y avait, la Russie a-t-elle possédés et exclusivement exercés dans la Mer de Behring, après ledit Traité ?

"4. Tous les droits de la Russie, en ce qui concerne la juridiction et en ce qui concerne les pêcheries de phoques, dans la partie de la Mer de Behring qui s'étend à l'est de la limite maritime déterminée par le Traité du 30 Mars, 1867, entre les États-Unis et la Russie, ne sont-ils pas intégralement passés aux États-Unis en vertu de ce même Traité ?

"5. Les États-Unis ont-ils quelque droit, et, en cas d'affirmative, quel droit ont-ils, soit à la protection, soit à la propriété des phoques à fourrure qui fréquentent les îles appartenant aux États-Unis dans la Mer de Behring, quand ces phoques se trouvent en dehors de la limite ordinaire de 3 milles ?"

Et attendu que, par l'Article VII dudit Traité, il a été pareillement convenu ce qui suit :—

"Si la décision des questions qui précèdent, en ce qui concerne la juridiction exclusive des États-Unis, laisse les choses en tel état que le concours de la Grande-Bretagne soit nécessaire pour l'établissement de Règlements en vue de la protection et de la préservation convenables des phoques à fourrure habitant ou fréquentant la Mer de Behring, les Arbitres auront à déterminer quels Règlements communs sont nécessaires, en dehors des limites de la juridiction des Gouvernements respectifs, et sur quelles eaux ces Règlements devraient s'appliquer. . . . .

"Les Hautes Parties Contractantes s'engagent en outre à unir leurs efforts pour obtenir l'adhésion d'autres Puissances à ces Règlements ;"

Et attendu que, par l'Article VIII dudit Traité, après avoir exposé que les Hautes Parties Contractantes n'avaient pu s'entendre sur une formule qui comprît la question des responsabilités à la charge de l'une d'elles, à raison des préjudices allégués avoir été causés à l'autre, ou aux citoyens de l'autre, à l'occasion des réclamations présentées et soutenues par ladite partie, et qu'elles "désiraient que cette question secondaire ne suspendît ou ne retardât pas plus longtemps la production et la décision des questions principales," les Hautes Parties Contractantes sont convenues que "chacune d'elles pourrait soumettre aux Arbitres toute question de fait impliquée dans lesdites réclamations et demander une décision à cet égard, après quoi la question de la responsabilité de chacun des deux Gouvernements à raison des faits établis serait matière à négociations ultérieures ;"

Et attendu que le Président des États-Unis d'Amérique a désigné l'Honorable John M. Harlan, Juge de la Cour Suprême des États-Unis, et l'Honorable John T. Morgan, Sénateur des États-Unis, pour être deux desdits Arbitres ; que Sa Majesté Britannique a désigné le Très Honorable Lord Hannen et l'Honorable Sir John Thompson, Ministre de la Justice et Attorney-Général pour le Canada, pour être deux desdits Arbitres ; que son Excellence le Président de la République Française a désigné le Baron Alphonse de Courcel, Sénateur, Ambassadeur de France, pour être un desdits Arbitres ; que Sa Majesté le Roi d'Italie a désigné le Marquis Emilio Visconti Venosta, ancien Ministre des Affaires Étrangères et Sénateur du Royaume d'Italie, pour être un desdits Arbitres ; et que Sa Majesté le Roi de Suède et de Norvège a désigné M. Gregers Gram, Ministre d'État, pour être un desdits Arbitres ;

Et attendu que nous susnommés, Arbitres désignés et investis de la manière qui vient d'être relatée, ayant accepté de prendre la charge de cet Arbitrage, et nous étant dûment réunis à Paris, avons procédé avec impartialité et soin à l'examen et à la décision de toutes les questions qui ont été soumises à nous, Arbitres susnommés, en vertu du dit Traité, ou à nous présentées, au nom des Gouvernements des États-Unis et de Sa Majesté Britannique respectivement, de la manière prévue par ledit Traité ;

Nous Arbitres susnommés, ayant examiné avec impartialité et soin lesdites questions, décidons et prononçons de même, sur lesdites questions, par notre présente sentence, de la manière qui suit, à savoir :—

En ce qui concerne les cinq points mentionnés dans l'Article VI et sur chacun desquels notre jugement doit comprendre une décision distincte, nous décidons et prononçons ce qui suit :—

Sur le premier des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons ce qui suit :

Par l'Ukase de 1821 la Russie a revendiqué des droits de juridiction, dans la mer connue aujourd'hui sous le nom de Mer de Behring, jusqu'à la distance de 100 milles Italiens au large des côtes et îles lui appartenant ; mais, au cours des négociations qui ont abouti à la conclusion des Traités de 1824 avec les États-Unis et de 1825 avec la Grande-Bretagne, elle a admis que sa juridiction dans ladite mer serait limitée à une portée de canon de la côte ; et il apparaît que, depuis cette époque jusqu'à l'époque de la cession de l'Alaska aux États-Unis, elle n'a jamais affirmé en fait ni exercé aucune juridiction exclusive dans la Mer de Behring, ni aucun droit exclusif sur les pêcheries de phoques à fourrure dans ladite mer, au delà des limites ordinaires des eaux territoriales.

Sur le second des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que la Grande-Bretagne n'a reconnu ni concédé à la Russie aucun droit à une juridiction exclusive sur les pêcheries de phoques dans la Mer de Behring, en dehors des eaux territoriales ordinaires.

Sur le troisème des cinq points susdits, et quant à la partie dudit troisième point où nous est soumise la question de savoir si l'espace de mer aujourd'hui connu sous le nom de Mer de Behring était compris dans l'expression "Océan Pacifique" telle qu'elle a été employée dans le texte du Traité de 1825 entre la Grande-Bretagne et la Russie, nous, Arbitres susnommés, décidons et prononçons à l'unanimité que l'espace de mer aujourd'hui connu sous le nom de Mer de Behring était compris dans l'expression "Océan Pacifique" telle qu'elle a été employée dans ledit Traité.

Et quant à la partie dudit troisième point d'après laquelle nous avons à décider quels droits, si droits il y avait, la Russie a possédés et exclusivement exercés après ledit Traité de 1825, nous, Arbitres susnommés, le Baron de Courcel, le Juge Harlan, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que la Russie n'a possédé ni exercé, après le Traité de 1825, aucun droit exclusif de juridiction dans la Mer de Behring ni aucun droit exclusif sur les pêcheries de phoques dans cette mer, au delà de la limite ordinaire des eaux territoriales.

Sur le quatrième des cinq points susdits, nous, Arbitres susnommés, décidons et prononçons à l'unanimité que tous les droits de la Russie, en ce qui concerne la juridiction et en ce qui concerne les pêcheries de phoques, dans la partie de la Mer de Behring qui s'étend à l'est de la limite maritime déterminée par le Traité du 30 Mars, 1867, entre les États-Unis et la Russie, sont intégralement passés aux États-Unis en vertu de ce même Traité.

Sur le cinquième des cinq points susdits, nous, Arbitres susnommés, le Baron de Courcel, Lord Hannen, Sir John Thompson, le Marquis Visconti Venosta, et M. Gregers Gram, constituant la majorité des Arbitres, décidons et prononçons que les États-Unis n'ont aucun droit de protection ou de propriété sur les phoques à fourrure qui fréquentent les îles appartenant aux États-Unis dans la Mer de Behring, quand ces phoques se trouvent en dehors de la limite ordinaire de 3 milles.

Et attendu que les décisions ci-dessus relatées, sur les questions concernant la juridiction exclusive des États-Unis mentionnées dans l'Article VI, laissent les choses en état tel que le concours de la Grande-Bretagne est nécessaire pour l'établissement de Règlements en vue de la protection et de la préservation convenables des phoques à fourrure habitant ou fréquentant la Mer de Behring, le Tribunal ayant décidé à la majorité absolue des voix sur chacun des Articles des Règlements qui suivent, nous, Arbitres susnommés, le Baron de Courcel, Lord Hannen, le Marquis Visconti Venosta, et M. Gregers Gram, donnant notre assentiment à l'ensemble des Articles des Règlements qui suivent, et constituant la majorité absolue des Arbitres, décidons et prononçons, d'après le mode prescrit par le Traité, que les Règlements communs qui suivent, applicables en dehors des limites de la juridiction des Gouvernements respectifs, sont nécessaires, et qu'ils doivent s'étendre sur les eaux ci-après déterminées :—

Article 1. Les Gouvernements des États-Unis et de la Grande-Bretagne interdiront à leurs citoyens et sujets respectifs de tuer, prendre ou poursuivre, en tout temps et de quelque manière que ce soit, les animaux communément appelés phoques à fourrure, dans une zone de 60 milles autour des Iles Pribyloff, en y comprenant les eaux territoriales.

Les milles mentionnés dans le paragraphe précédent sont des milles géographiques de 60 au degré de latitude.

Article 2. Les deux Gouvernements interdiront à leurs citoyens et sujets respectifs de tuer, prendre ou poursuivre les phoques à fourrure, de quelque manière que ce soit, pendant la saison s'étendant chaque année du 1er Mai au 31 Juillet inclusivement, sur la haute mer, dans la partie de l'Océan Pacifique, en y comprenant la Mer de Behring, qui est sise au nord du 35e degré de latitude nord, et à l'est du 180e degré de longitude de Greenwich jusqu'à sa rencontre avec la limite maritime décrite dans l'Article 1er du Traité de 1867 entre les États-Unis et la Russie, et ensuite à l'est de cette ligne jusqu'au Détroit de Behring.

Article 3. Pendant la période de temps et dans les eaux où la pêche des phoques à fourrure demeurera permise, les navires à voiles seront seuls admis à l'exercer ou à s'associer aux opérations de cette pêche. Ils auront cependant la faculté de se faire assister par des pirogues ou autres embarcations non pontées, mues par des pagaies, des rames ou des voiles, du genre de celles qui sont communément employées comme bateaux de pêche.

Article 4. Tout navire à voiles autorisé à se livrer à la pêche des phoques à fourrure devra être muni d'une licence spéciale délivrée à cet effet par son Gouvernement et devra porter un pavillon distinctif qui sera déterminé par ledit Gouvernement.

Article 5. Les patrons des navires engagés dans la pêche des phoques à fourrure devront mentionner exactement sur leurs livres de bord la date et le lieu de chaque opération de pêche des phoques à fourrure, ainsi que le nombre et le sexe des phoques capturés chaque jour. Ces mentions devront être communiquées par chacun des deux Gouvernements à l'autre à la fin de chaque saison de pêche.

Article 6. L'emploi des filets, des armes à feu et des explosifs sera interdit dans la pêche des phoques à fourrure. Cette restriction ne s'appliquera pas aux fusils de chasse, quand cette pêche sera pratiquée en dehors de la Mer de Behring et pendant la saison où elle pourra être légitimement exercée.

Article 7. Les deux Gouvernements prendront des mesures en vue de contrôler l'aptitude des hommes autorisés à exercer la pêche des phoques à fourrure; ces hommes devront être reconnus aptes à manier avec une habileté suffisante les armes au moyen desquelles cette pêche pourra être faite.

Article 8. Les Règlements contenus dans les précédents Articles ne s'appliqueront pas aux Indiens habitant sur les côtes du territoire des États-Unis ou de la Grande-Bretagne et pratiquant la pêche des phoques à fourrure dans des pirogues ou embarcations non pontées, non transportées par d'autres navires, ni employées à l'usage de ceux-ci, mues exclusivement à l'aide de pagaies, d'avirons ou de voiles, et manœuvrées chacune par cinq personnes au plus, de la manière jusqu'à présent usitée par les Indiens; pourvu que ceux-ci ne soient pas engagés au service d'autres personnes, et qu'alors qu'ils chassent ainsi dans des pirogues ou embarcations non pontées, ils ne poursuivent pas les phoques à fourrure, en dehors des eaux territoriales, en vertu d'engagements contractés pour la livraison des peaux à une personne quelconque.

Cette exception n'aura pas pour effet de porter atteinte à la législation nationale de l'un ou de l'autre des deux pays; elle ne s'étendra pas aux eaux de la Mer de Behring, ni aux eaux des passes Aléoutiennes.

Aucune des dispositions qui précèdent n'à pour objet de s'opposer à ce que les Indiens soient employés, comme chasseurs ou à tout autre titre, ainsi qu'ils l'ont été jusqu'à présent, sur des navires se livrant à la poursuite des phoques à fourrure.

Article 9. Les Règlements communs établis par les Articles précédents, en vue de la protection et de la préservation des phoques à fourrure, demeureront en vigueur jusqu'à ce qu'ils aient été en tout ou partie abolis ou modifiés par un accord entre les Gouvernements des États-Unis et de la Grande-Bretagne.

Lesdits Règlements communs seront soumis tous les cinq ans à un nouvel examen, pour que les deux Gouvernements intéressés se trouvent en mesure d'apprécier, à la lumière de l'expérience acquise, s'il y a lieu d'y apporter quelque modification.

Et attendu que le Gouvernement de Sa Majesté Britannique a soumis au Tribunal d'Arbitrage, par application de l'Article VIII dudit Traité, certaines questions de fait impliquées dans les réclamations dont il est fait mention audit Article VIII, et a soumis également à nous, formant ledit Tribunal, un exposé des faits dans les termes suivants:—

" *Conclusions de fait proposées par l'Agent de la Grande-Bretagne, acceptées par l'Agent des États-Unis, qui en admet l'exactitude, et soumises à l'examen du Tribunal d'Arbitrage.*

" 1. Que les diverses visites et saisies de navires ou de marchandises et les diverses arrestations de patrons et d'équipages, mentionnées dans l'Annexe au Mémoire Britannique (pages 1 à 60 inclusivement), ont été faites par autorité du Gouvernement des États-Unis; les questions se rapportant à la valeur desdits navires ou de leur contenu, ensemble ou séparément, et la question de savoir si les navires désignés dans l'Annexe au Mémoire Britannique, ou certains d'entre eux, étaient, en totalité ou en partie, la propriété de citoyens des États-Unis, ont été retirées et n'ont pas été l'objet de l'examen du Tribunal, sous cette réserve que les États-Unis gardent le droit de soulever ces questions ou quelqu'une d'entre elles, s'ils le jugent à propos, dans toute négociation ultérieure pouvant engager la responsabilité du Gouvernement des États-Unis, en ce qui touche le payement des sommes mentionnées dans l'Annexe au Mémoire Britannique.

" 2. Que les susdites saisies, sauf en ce qui concerne le 'Pathfinder,' saisi à Neah Bay, ont été effectuées dans la Mer de Behring, aux distances de la côte mentionnées au Tableau ci-annexé, sous la lettre (C).

" 3. Que lesdites visites et saisies de navires ont été faites par des navires armés pour le service public des États-Unis, dont les Commandants avaient reçu, toutes les fois qu'elles ont eu lieu, du Pouvoir Exécutif du Gouvernement des États-Unis, des instructions dont un exemplaire est reproduit en copie ci-après, Annexe (A), les autres exemplaires desdites instructions étant conformes à ce modèle sur les points essentiels; que, dans toutes les occasions où des poursuites entamées devant les Cours de District des États-Unis ont été suivies de condamnations, ces poursuites ont débuté par le dépôt d'un acte d'accusation, dont un modèle est annexé ci-dessous, Annexe (B), les actes d'accusation déposés dans les autres procédures étant, en tous points essentiels, semblables à ce modèle; que les actes ou délits, allégués comme motifs de ces visites et saisies, ont été accomplis ou commis dans la Mer de Behring, aux distances de la côte déjà indiquées; que, dans tous les cas où une condamnation a été prononcée, excepté ceux où les navires ont été relâchés après condamnation, la saisie a été approuvée par le Gouvernement des États-Unis, et que, dans les cas où les navires ont été relâchés, la saisie avait été opérée par autorité du Gouvernement des États-Unis; que les amendes et emprisonnements susdits ont été prononcés à raison d'infractions aux lois nationales des États-Unis—infractions toutes commises dans la Mer de Behring, aux distances de la côte déjà indiquées.

" 4. Que les différents ordres mentionnés dans l'Annexe ci-jointe sous la lettre (C) enjoignant à certains navires de quitter la Mer de Behring, ou de ne pas y entrer, ont été donnés par des navires armés pour le service public des États-Unis, dont les Commandants avaient toutes les fois qu'ils ont donné ces ordres, des instructions conformes à celles mentionnées ci-dessus sous le No. 3, et que les navires qui ont reçu ces injonctions étaient occupés à la chasse des phoques ou faisaient route pour entreprendre cette chasse; et que cette façon de procéder a été sanctionnée par le Gouvernement des États-Unis.

" 5. Que les Cours de District des États-Unis, devant lesquelles des poursuites ont été entamées ou suivies pour obtenir des condamnations contre les navires saisis, dont il est fait mention dans l'Annexe au Mémoire de la Grande-Bretagne (pages 1 à 60 inclusivement), avaient tous droits de juridiction et pouvoirs appartenant au Cour d'Amirauté, y compris la juridiction de Tribunaux de Prises, mais que, dans chaque cas particulier, la sentence prononcée par la Cour s'appuyait sur les causes mentionnées dans l'acte d'accusation.

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### " Annexe (A).

" (Traduction.) " *Département du Trésor, Cabinet du Secrétaire, Washington,*
" 21 *Avril*, 1886.

" Monsieur,

" Comme suite à une lettre du Département, en date de ce jour, vous enjoignant de vous diriger avec le vapeur du Service des Douanes 'Bear,' placé sous votre commandement, vers les îles aux phoques, vous êtes par les présentes investi de tous les pouvoirs nécessaires pour assurer l'exécution de la Loi dont les termes sont contenus dans la Section 1956 des Statuts Revisés des États-Unis, et ordre vous est donné de saisir tout navire et d'arrêter et livrer aux autorités compétentes tout individu ou toutes personnes que vous trouveriez agissant en violation de la Loi susmentionnée, après qu'un avertissement suffisant leur aura été donné.

" Vous saisirez également tous spiritueux et armes à feu que l'on chercherait à introduire dans le pays sans une permission en règle, en exécution de la Section 1955 des Statuts Revisés et de la Proclamation du Président en date du 4 Février, 1870.

"Respectueusement à vous.

(Signé) "C. S. FAIRCHILD,
"*Secrétaire par intérim.*

"Au Capitaine M. A. Healy,
"Commandant le vapeur du Service des Douanes 'Bear,'
"à San Francisco (Californie).

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## "Annexe (B).

"Devant la Cour de District des États-Unis pour le District d'Alaska.

"*Session* (*Special Term*) *d'Août* 1886.

"(Traduction.)

"A l'Honorable Lafayette Dawson, Juge de ladite Cour de District.

"Le réquisitoire à fin d'information par lequel M. D. Ball, Attorney des États-Unis pour le District d'Alaska, poursuivant au nom des Etats-Unis et présent ici devant la Cour, en sa personne, comme Représentant des Etats-Unis et en leur nom, contre la goélette 'Thornton,' ses agrès, apparaux, embarcations, cargaison et matériel, et contre toutes personnes intervenant comme ayant des intérêts engagés dans ce navire, en poursuite à fin de confiscation, présente les allégations et déclarations suivantes :—

"Que Charles A. Abbey, officier du Service des Douanes Maritimes des États-Unis, chargé d'une mission spéciale dans les eaux du District d'Alaska, antérieurement au présent jour, à savoir le 1<sup>er</sup> Août, 1886, dans les limites du territoire d'Alaska et dans ses eaux, et dans les limites du district civil et judiciaire d'Alaska, à savoir dans l'étendue des eaux de cette partie de la Mer de Behring qui appartient audit district, dans des eaux navigables pour des navires venant de la haute mer et jaugeant 10 tonneaux ou au-dessus, a saisi le vaisseau ou navire communément dénommé goélette, le 'Thornton,' ses agrès, apparaux, embarcations, cargaison et matériel, lesquels étaient la propriété d'une ou de plusieurs personnes inconnues dudit attorney, et les a confisqués au profit des États-Unis pour les causes ci-après :

"Que ledit navire ou goélette a été trouvé se livrant à la destruction des phoques à fourrure, dans les limites du territoire d'Alaska et de ses eaux, en violation des dispositions de la Section 1956 des Statuts Revisés des États-Unis ;

"Et ledit attorney déclare que toutes les propositions ci-dessus énoncées et chacune d'elles sont et étaient vraies, et qu'elles tombent sous la juridiction maritime et d'amirauté de cette Cour, et que, pour cette raison, et en exécution des Statuts des États-Unis établis et édictés pour de tels cas, le navire ou la goélette mentionnée et décrite ci-dessus, jaugeant plus de 20 tonneaux, ses agrès, apparaux, embarcations, cargaison et matériel ont été et sont confisqués au profit des États-Unis, et que ladite goélette se trouve maintenant dans le district susdit.

"Ce pourquoi ledit attorney demande que l'honorable Cour de Justice procède et avise comme d'usage en cette affaire, et que toutes personnes ayant un intérêt dans ladite goélette ou navire soient citées par voie d'assignation générale ou spéciale, afin de répondre aux propositions susénoncées, et que, à la suite de la procédure à ce nécessaire, ledit navire ou goélette, ses agrès, apparaux, embarcations, cargaison et matériel soient condamnés pour ladite cause ou tout autre qu'il apparaîtrait juste, par arrêt formel et décret de cette honorable Cour, et confisqués au profit desdits États-Unis, selon la forme des Statuts desdits États-Unis, établis et édictés pour de tels cas.

(Signé) "M. D. BALL,
"*Attorney des États-Unis pour le district d'Alaska.*

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## "Annexe (C).

"La Table ci-dessous contient les noms des navires Britanniques employés à la chasse des phoques qui ont été saisis ou avertis par les croiseurs du Service des Douanes des États-Unis, de 1886 à 1890 et la distance approximative de la terre où ces saisies ont eu lieu. Ces distances sont indiquées, en ce qui concerne les navires 'Carolena,' 'Thornton,' et 'Onward,' d'après le témoignage du Commandant Abbey, de la Marine des États-Unis (voir 50<sup>e</sup> Congrès, 2<sup>e</sup> Session, Sénat, Documents Exécutifs, No. 106, pp. 20, 30, et 40). Elles sont indiquées, en ce qui concerne les navires 'Anna Beck,' 'W. P. Sayward,' 'Dolphin,' et 'Grace,' d'après le témoignage du Capitaine Shepard, de la Marine du Trésor des États-Unis (Livre Bleu, États-Unis, No. 2, 1890, pp. 80-82 (voir 'Appendice au Mémoire Britannique,' vol. iii)."

| Nom du Navire. | Date de la Saisie. | | Distance approximative de Terre au moment de la Saisie. | Navire des États-Unis qui a fait la Saisie. |
|---|---|---|---|---|
| Carolena | 1<sup>er</sup> Août, | 1886 | 75 milles | Corwin. |
| Thornton | 1<sup>er</sup> „ | 1886 | 70 milles | Idem. |
| Onward | 2 „ | 1886 | 115 milles | Idem. |
| Favourite | 2 „ | 1886 | Averti par le "Corwin," à peu près dans la même position que "l'Onward." | |
| Anna Beck | 2 Juillet, | 1887 | 66 milles | Rush. |
| W. P. Sayward | 9 „ | 1887 | 59 milles | Idem. |
| Dolphin | 12 „ | 1887 | 40 milles | Idem. |
| Grace | 17 „ | 1887 | 96 milles | Idem. |
| Alfred Adams | 10 Août, | 1887 | 62 milles | Idem. |
| Ada | 25 „ | 1887 | 15 milles | Bear. |
| Triumph | 4 „ | 1887 | Averti par le "Rush" de ne pas entrer dans la Mer de Behring. | |
| Juanita | 31 Juillet, | 1889 | 66 milles | Rush. |
| Pathfinder | 29 „ | 1889 | 50 milles | Idem. |
| Triumph | 11 „ | 1889 | Averti par le "Rush" d'avoir à quitter la Mer de Behring. Position au moment de l'avertissement (?). | |
| Black Diamond | 11 „ | 1889 | 35 milles | Idem. |
| Lily | 6 Août, | 1889 | 66 milles | Idem. |
| Ariel | 30 Juillet, | 1889 | Averti par le "Rush" d'avoir à quitter la Mer de Behring | |
| Kate | 13 Août, | 1889 | Idem. | |
| Minnie | 15 Juillet, | 1889 | 65 milles | Idem. |
| Pathfinder | 27 Mars, | 1890 | Saisi dans la Baie de Neah* | Corwin. |

Et attendu que le Gouvernement de Sa Majesté Britannique a demandé à nous, Arbitres susnommés, de décider sur lesdites questions de fait, telles qu'elles résultent de l'exposé susmentionné ; que l'Agent et les Conseils du Gouvernement des États-Unis ont, en notre présence et s'adressant à nous, déclaré que ledit exposé des faits était confirmé par les dépositions des témoins, et qu'ils s'étaient mis d'accord avec l'Agent et les Conseils de Sa Majesté Britannique pour s'en remettre à nos Arbitres de dire et prononcer véritable, en tant que nous le jugerions à propos, ledit exposé des faits.

Nous, Arbitres susnommés, disons et prononçons à l'unanimité que lesdits faits, tels qu'ils se trouvent dans ledit exposé, sont véritables.

Et attendu que toutes et chacune des questions qui ont été examinées par le Tribunal ont été décidées à la majorité absolue des voix,

Nous, le Baron de Courcel, Lord Hannen, le Juge Harlan, Sir John Thompson, le Sénateur Morgan, le Marquis Visconti Venosta, et M. Gregers Gram, étant entendu que les Arbitres qui se sont trouvés en minorité sur certaines questions, ne retirent pas leurs votes, déclarons que le présent acte contient la décision finale et la sentence écrite du Tribunal, conformément aux prescriptions du Traité.

Fait en double à Paris, et signé par nous, le 15<sup>e</sup> jour d'Août de l'année 1893.

(Signé) ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.
HANNEN.
JNO. S. D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

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## [English Version.]

*Award of the Tribunal of Arbitration constituted under the Treaty concluded at Washington, February 29, 1892, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland.*

WHEREAS by a Treaty between the United States of America and Great Britain, signed at Washington the 29th February, 1892, the ratifications of which by the Governments of the two countries were exchanged at London on the 7th May, 1892, it was, amongst other things, agreed and concluded that the questions which had arisen between the Government of the United States of America and the Government of Her Britannic

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* La Baie de Neah est située dans l'État de Washington, et le "Pathfinder" y a été saisi, du chef de délits commis par lui dans la Mer de Behring l'année précédente. Ce bâtiment fut relâché deux jours plus tard.

Majesty, concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters, should be submitted to a Tribunal of Arbitration to be composed of seven Arbitrators, who should be appointed in the following manner, that is to say: two should be named by the President of the United States; two should be named by Her Britannic Majesty; his Excellency the President of the French Republic should be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy should be so requested to name one; His Majesty the King of Sweden and Norway should be so requested to name one; the seven Arbitrators to be so named should be jurists of distinguished reputation in their respective countries, and the selecting Powers should be requested to choose, if possible, jurists who are acquainted with the English language;

And whereas it was further agreed by Article II of the said Treaty that the Arbitrators should meet at Paris within twenty days after the delivery of the Counter-Cases mentioned in Article IV, and should proceed impartially and carefully to examine and decide the questions which had been or should be laid before them as in the said Treaty provided on the part of the Governments of the United States and of Her Britannic Majesty respectively, and that all questions considered by the Tribunal, including the final decision, should be determined by a majority of all the Arbitrators;

And whereas by Article VI of the said Treaty, it was further provided as follows:—

"In deciding the matters submitted to the said Arbitrators, it is agreed that the following five points shall be submitted to them in order that their Award shall embrace a distinct decision upon each of said five points, to wit:

"1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

"2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

"3. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said Treaty?

"4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that Treaty?

"5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit?"

And whereas by Article VII of the said Treaty it was further agreed as follows:—

"If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the Arbitrators shall then determine what concurrent Regulations, outside the jurisdictional limits of the respective Governments, are necessary, and over what waters such Regulations should extend;

"The High Contracting Parties furthermore agree to co-operate in securing the adhesion of other Powers to such Regulations."

And whereas, by Article VIII of the said Treaty, after reciting that the High Contracting Parties had found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens in connection with the claims presented and urged by it, and that "they were solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions," the High Contracting Parties agreed that "either of them might submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found, to be the subject of further negotiation;"

And whereas the President of the United States of America named the Honourable John M. Harlan, Justice of the Supreme Court of the United States, and the Honourable John T. Morgan, Senator of the United States, to be two of the said Arbitrators; and Her Britannic Majesty named the Right Honourable Lord Hannen and the Honourable Sir John Thompson, Minister of Justice and Attorney-General for Canada, to be two of the said Arbitrators; and his Excellency the President of the French Republic, named the Baron de Courcel, Senator, Ambassador of France, to be one of the said Arbitrators; and His Majesty the King of Italy named the Marquis Emilio Visconti Venosta, former Minister of Foreign Affairs and Senator of the Kingdom of Italy, to be one of the said Arbitrators; and His Majesty the King of Sweden and Norway named Mr. Gregers Gram, Minister of State, to be one of the said Arbitrators;

And whereas we, the said Arbitrators, so named and appointed, having taken upon ourselves the burden of the said Arbitration, and having duly met at Paris, proceeded impartially and carefully to examine and decide all the questions submitted to us the said Arbitrators, under the said Treaty, or laid before us as provided in the said Treaty on the part of the Governments of Her Britannic Majesty and the United States respectively.

Now we, the said Arbitrators, having impartially and carefully examined the said questions, do in like manner by this our Award decide and determine the said questions in manner following, that is to say, we decide and determine as to the five points mentioned in Article VI, as to which our Award is to embrace a distinct decision upon each of them;

As to the first of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine as follows:—

By the Ukase of 1821, Russia claimed jurisdiction in the sea now known as the Behring's Sea, to the extent of 100 Italian miles from the coasts and islands belonging to her, but, in the course of the negotiations which led to the conclusion of the Treaties of 1824 with the United States, and of 1825 with Great Britain, Russia admitted that Her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Behring's Sea, or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

As to the second of the said five points, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that Great Britain did not recognize or concede any claim, upon the part of Russia to exclusive jurisdiction as to the seal-fisheries in Behring Sea, outside of ordinary territorial waters.

As to the third of the said five points, as to so much thereof as requires us to decide whether the body of water now known as the Behring Sea was included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia, we, the said Arbitrators, do unanimously decide and determine, that the body of water now known as the Behring Sea, was included in the phrase "Pacific Ocean" as used in the said Treaty.

And as to so much of the said third point as requires us to decide what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after the said Treaty of 1825, we, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that no exclusive rights of jurisdiction in Behring Sea and no exclusive rights as to the seal fisheries therein, were held or exercised by Russia outside of ordinary territorial waters after the Treaty of 1825.

As to the fourth of the said five points, we, the said Arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea, east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, did pass unimpaired to the United States under the said Treaty.

As to the fifth of the said five points, we, the said Baron de Courcel, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram being a majority of the said Arbitrators, do decide and determine that the United States has not any right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Behring Sea, the Tribunal having decided by a majority as to each Article of the following Regulations, we, the said Baron de Courcel, Lord Hannen, Marquis Visconti

Venosta, and Mr. Gregers Gram, assenting to the whole of the nine Articles of the following Regulations, and being a majority of the said Arbitrators, do decide and determine in the mode provided by the Treaty, that the following concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary, and that they should extend over the waters hereinafter mentioned, that is to say:

Article 1. The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively, to kill, capture, or pursue at any time and in any manner whatever, the animals commonly called fur-seals, within a zone of 60 miles around the Pribiloff Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of 60 to a degree of latitude.

Article 2. The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from the 1st May to the 31st July, both inclusive, the fur-seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of north latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article I of the Treaty of 1867 between the United States and Russia, and following that line up to Behring Straits.

Article 3. During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing-vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

Article 4. Each sailing vessel authorized to fish for fur-seals must be provided with a special licence issued for that purpose by its Government, and shall be required to carry a distinguishing flag to be prescribed by its Government.

Article 5. The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log-book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

Article 6. The use of nets, fire-arms, and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shot guns when such fishing takes place outside of Behring's Sea during the season when it may be lawfully carried on.

Article 7. The two Governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing. These men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

Article 8. The Regulations contained in the preceding Articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each in the way hitherto practised by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur-seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea, or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur-sealing vessels as heretofore.

Article 9. The concurrent Regulations hereby determined with a view to the protection and preservation of the fur-seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent Regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

And whereas the Government of Her Britannic Majesty did submit to the Tribunal of Arbitration by Article VIII of the said Treaty certain questions of fact involved in the claims referred to in the said Article VIII, and did also submit to us, the said Tribunal, a statement of the said facts, as follows, that is to say:—

*Findings of fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.*

"1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pp. 1 to 60 inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from, and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.

"2. That the seizures aforesaid, with the exception of the 'Pathfinder,' seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto marked (C).

"3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto marked (A), and that the others were, in all substantial respects, the same. That in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B), and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid;

"4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States;

"5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

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## "Annex (A).

"*Treasury Department, Office of the Secretary, Washington,*
"*April* 21, 1886.

"Sir,

"Referring to Department letter of this date, directing you to proceed with the revenue-steamer 'Bear,' under your command, to the Seal Islands, &c., you are hereby clothed with full power to enforce the Law contained in the provisions of Section 1956 of the United States' Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the Law referred to, after due notice shall have been given.

"You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes, and the Proclamation of the President dated the 4th February, 1870.

"Respectfully yours,
(Signed) "C. S. FAIRCHILD,
"*Acting Secretary.*

"Captain M. A. Healy,
"Commanding revenue-steamer 'Bear,'
"San Francisco, California."

## "Annex (B).

"In the District Court of the United States for the District of Alaska.

"*August Special Term*, 1886.

"To the Honourable Lafayette Dawson, Judge of said District Court,

"The libel of information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner 'Thornton,' her tackle apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:—

"That Charles A. Abbey, an officer in the Revenue Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the 1st day of August, 1886, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring Sea belonging to the said district, on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the 'Thornton,' her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

"That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

"And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and Maritime jurisdiction of this Court, and that by reason thereof, and by force of the Statutes of the United States in such cases made and provided, the afore-mentioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

"Wherefore the said Attorney prays the usual process and monition of this honourable Court issue in this behalf, and that all persons interested in the before-mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture, may, for the cause aforesaid, and others appearing, to be condemned by the definite sentence and decree of this honourable Court, as forfeited to the use of the said United States, according to the form of the Statute of the said United States in such cases made and provided.

(Signed) "M. D. BALL,
"*United States' District Attorney for the District of Alaska.*"

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## "Annex (C).

"The following Table shows the names of the British sealing-vessels seized or warned by United States' revenue-cruizers, 1886-1890, and the approximate distance from land when seized. The distances assigned in the cases of the 'Carolena,' 'Thornton,' and 'Onward,' are on the authority of United States' Naval Commander Abbey (see 50th Congress, 2nd Session, Senate Executive Documents No. 106, pp. 20, 30, 40). The distances assigned in the cases of the 'Anna Beck,' 'W. P. Sayward,' 'Dolphin,' and 'Grace' are on the authority of Captain Shepard, United States' Royal Marine (Blue Book, United States, No. 2, 1890, pp. 80-82. See Appendix, vol. iii)."

| Name of Vessel. | Date of Seizure. | | Approximate Distance from Land when seized. | United States' Vessel making Seizures. |
|---|---|---|---|---|
| Carolena | August | 1, 1886 | 75 miles | Corwin. |
| Thornton | „ | 1, 1886 | 70 miles | Ditto. |
| Onward | „ | 2, 1886 | 115 miles | Ditto. |
| Favourite | „ | 2, 1886 | Warned by "Corwin" in about same position as "Onward." | |
| Anna Beck | July | 2, 1887 | 66 miles | Rush. |
| W. P. Sayward | „ | 9, 1887 | 59 miles | Ditto. |
| Dolphin | „ | 12, 1887 | 40 miles | Ditto. |
| Grace | „ | 17, 1887 | 96 miles | Ditto. |
| Alfred Adams | August | 10, 1887 | 62 miles | Ditto, |
| Ada | „ | 25, 1887 | 15 miles | Bear. |
| Triumph | „ | 4, 1887 | Warned by "Rush" not to enter Behring Sea. | |
| Juanita | July | 31, 1889 | 66 miles | Rush. |
| Pathfinder | „ | 29, 1889 | 50 miles | Ditto. |
| Triumph | „ | 11, 1889 | Ordered out of Behring Sea by "Rush" (?). As to position when warned. | |
| Black Diamond | „ | 11, 1889 | 35 miles | Ditto. |
| Lily | August | 6, 1889 | 66 miles | Ditto. |
| Ariel | July | 30, 1889 | Ordered out of Behring Sea by "Rush." | |
| Kate | August | 13, 1889 | Ditto. | |
| Minnie | July | 15, 1889 | 65 miles | Ditto. |
| Pathfinder | March | 27, 1890 | Seized in Neah Bay* | Corwin. |

---

* Neah Bay is in the State of Washington, and the "Pathfinder" was seized there on charges made against her in Behring Sea in the previous year. She was released two days later.

And whereas the Government of Her Britannic Majesty did ask the said Arbitrators to find the said facts as set forth in the said statement, and whereas the Agent and Counsel for the United States' Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the Agent and Counsel for Her Britannic Majesty that we, the Arbitrators, if we should think fit so to do might find the said statement of facts to be true.

Now, we, the said Arbitrators, do unanimously find the facts as set forth in the said statement to be true.

And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators;

Now, we, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final decision and Award in writing of this Tribunal in accordance with the Treaty.

Made in duplicate at Paris, and signed by us the 15th day of August, in the year 1893.

And we do certify this English version thereof to be true and accurate.

(Signed) ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.
HANNEN.
JNO. S. D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

---

Inclosure 2.

*Déclarations faites par le Tribunal d'Arbitrage et présentées aux Gouvernements des États-Unis et de la Grande-Bretagne pour être prises en considération par ces Gouvernements.*

1. LES Arbitres déclarent que les Règlements communs tels qu'ils sont établis par le Tribunal d'Arbitrage, en vertu de l'Article VII du Traité du 29 Février, 1892, n'étant applicables que sur la haute mer, devront, dans leur pensée, être complétés par d'autres Règlements applicables dans les limites de la souveraineté de chacune des deux Puissances intéressées et qui devront être fixés par elles d'un commun accord.

2. Vu l'état critique auquel il paraît constant que la race des phoques à fourrure se trouve actuellement réduite par suite de circonstances incomplètement éclaircies, les Arbitres croient devoir recommander aux deux Gouvernements de se concerter en vue d'interdire toute destruction des phoques à fourrure, tant sur terre que sur mer, pendant une période de deux ou trois ans, ou d'une année au moins, sauf telles exceptions que les deux Gouvernements pourraient trouver à propos d'admettre.

Si cette mesure donnait de bons résultats, elle pourrait être appliquée de nouveau, à certains intervalles, suivant les circonstances.

3. Les Arbitres déclarent en outre que, dans leur pensée, l'exécution des Règlements établis par le Tribunal d'Arbitrage devra être assurée par un ensemble de stipulations et de mesures qu'il appartiendra aux deux Puissances d'arrêter, et que le Tribunal doit s'en remettre en conséquence à ces deux Puissances pour rendre effectifs les Règlements établis par lui.

Fait et signé à Paris, le 15 Août, 1893.

(Signé) ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.

J'approuve les Déclarations 1 et 3. HANNEN.

J'approuve les Déclarations 1 et 3. JNO. S D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

[English Version.]

### *Declarations made by the Tribunal of Arbitration and referred to the Governments of the United States and Great Britain for their consideration.*

1. THE Arbitrators declare that the concurrent Regulations, as determined upon by the Tribunal of Arbitration, by virtue of Article VII of the Treaty of the 29th February, 1892, being applicable to the high sea only, should, in their opinion, be supplemented by other Regulations applicable within the limits of the sovereignty of each of the two Powers interested and to be settled by their common agreement.

2. In view of the critical condition to which it appears certain that the race of fur-seals is now reduced in consequence of circumstances not fully known, the Arbitrators think fit to recommend both Governments to come to an understanding in order to prohibit any killing of fur-seals, either on land or at sea, for a period of two or three years, or at least one year, subject to such exceptions as the two Governments might think proper to admit of.

Such a measure might be recurred to at occasional intervals if found beneficial.

3. The Arbitrators declare moreover that, in their opinion, the carrying out of the Regulations determined upon by the Tribunal of Arbitration should be assured by a system of stipulations and measures to be enacted by the two Powers; and that the Tribunal must, in consequence, leave it to the two Powers to decide upon the means for giving effect to the Regulations determined upon by it.

We do certify this English version to be true and accurate and have signed the same at Paris, this 15th day of August, 1893.

(Signed) ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.

I approve Declarations 1 and 3. HANNEN.

I approve Declarations 1 and 3. JNO. S. D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

UNITED STATES. No. 10 (1893).

# BEHRING SEA ARBITRATION.

AWARD of the Tribunal of Arbitration, constituted under Article I of the Treaty concluded at Washington on the 29th February, 1892, between Her Britannic Majesty and the United States of America.

*Presented to both Houses of Parliament by Command of Her Majesty. August* 1893.

LONDON:
PRINTED BY HARRISON AND SONS.

UNITED STATES. No. 9 (1893).

# CORRESPONDENCE

RESPECTING A

# PROPOSAL MADE BY THE GOVERNMENT OF THE UNITED STATES

FOR THE

# SETTLEMENT OF INTERNATIONAL DISPUTES BY ARBITRATION.

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*Presented to both Houses of Parliament by Command of Her Majesty.*
*August* 1893.

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# Correspondence respecting a Proposal made by the Government of the United States for the Settlement of International Disputes by Arbitration.

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## No. 1.

*Sir J. Pauncefote to the Marquis of Salisbury.—(Received May 27.)*

My Lord, *Washington, May* 16, 1890.

I HAVE the honour to inclose herewith copy of a Resolution which was recently passed in the Senate (the House of Representatives concurring) to invite international arbitration in all differences between the United States and other countries.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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### Inclosure in No. 1.

*51st Congress, 1st Session.—Mis. Doc. No.* 113.

HOUSE OF REPRESENTATIVES.

(Report No. 628.)

*Concurrent Resolution to invite International Arbitration as to Differences between Nations.*

*February* 20, 1890.—Referred to the Committee on Foreign Affairs and ordered to be printed.

*March* 3, 1890.—Referred to the House Calendar and ordered to be printed.

IN THE SENATE OF THE UNITED STATES.

*February* 14, 1890.

RESOLVED by the Senate (the House of Representatives concurring), that the President be, and is hereby, requested to invite, from time to time as fit occasions may arise, negotiations with any Government with which the United States has, or may have, diplomatic relations, to the end that any differences or disputes arising between the two Governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means.

Attest:
(Signed) ANSON G. McCOOK, *Secretary.*

## No. 2.

*Mr. Wyndham to the Marquis of Salisbury.*—(*Received August* 5.)

My Lord, *Rio de Janeiro, July* 13, 1890.

I HAVE the honour to inclose herewith the text, as published in the "Diario Official" of the 12th instant,* of the Treaty on Arbitration which was signed in Washington on the 28th April last by the Representatives of Brazil, Bolivia, Ecuador, Guatemala, Haïti, Honduras, Nicaragua, Salvador, and the United States of America.

As your Lordship will doubtless have received the English text of this Treaty from Her Majesty's Minister at Washington, I do not forward a translation of it.

I have, &c.
(Signed) HUGH WYNDHAM.

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## No. 3.

*Sir J. Pauncefote to the Marquis of Salisbury.*—(*Received September* 15.)

My Lord, *Washington, September* 4, 1890.

IN June last I informed your Lordship that Reports had been adopted by the International American Conference recommending the ratification of Treaties binding the nations of North and South America to settle their differences by arbitration, as well as the adoption of a similar plan for the settlement of controversies between them and the nations of Europe.

The President to-day has transmitted to Congress the recommendations of the Conference on this subject. I have not yet obtained a copy of the President's Message, but from reports which have been published in the press it appears that he has stated in his letter of transmission that " the ratification of the Treaties contemplated by these Reports will constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere."

As soon as the Message is published, I will not fail to transmit copies to your Lordship.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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## No. 4.

*Sir J. Pauncefote to the Marquis of Salisbury.*—(*Received September* 29.)

My Lord, *Washington, September* 19, 1890.

WITH reference to my despatch of the 4th instant, I have the honour to transmit to your Lordship herewith copies of the Message of the President, transmitting to Congress the Reports adopted by the Pan-American Conference relating to the subject of international arbitration.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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* See Inclosure 3 in No. 6.

Inclosure in No. 4.

*51st Congress, 1st Session.—Ex. Doc. No.* 224.

SENATE.

*Message from the President of the United States, transmitting Reports adopted by the Conference of American Nations recently in Session at Washington, relating to the subject of International Arbitration.*

*September* 3, 1890.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

To the Senate and House of Representatives:

I TRANSMIT herewith a letter from the Secretary of State, which is accompanied by three Reports adopted by the Conference of American nations recently in session at Washington relating to the subject of international arbitration. The ratification of the Treaties contemplated by these Reports will constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere.

(Signed) BENJ. HARRISON.

*Executive Mansion, September* 3, 1890.

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The President: *Department of State, Washington, August* 26, 1890.

The Act of Congress approved on the 24th May, 1888, authorized the President to invite the several other Governments of America to join the United States in a Conference "for the purpose of discussing and recommending for adoption some plan of arbitration for the settlement of disagreements and disputes that may hereafter arise between them." In pursuance of this invitation the Conference recently in session at this capital adopted three Reports:—

1. Recommending a definite plan of arbitration for the settlement of differences between the American nations.
2. Recommending the adoption of a similar plan by the nations of Europe.
3. Declaring that the right of conquest could not be recognized by the American nations.

I have the honour to inclose herewith copies of these Reports for the information of Congress.

Respectfully submitted,

(Signed) JAMES G. BLAINE.

---

## INTERNATIONAL AMERICAN CONFERENCE.

*Reports of the Committee on General Welfare.*

(As adopted by the Conference.)

### 1.—*Plan of Arbitration.*

The Delegates from North, Central, and South America in Conference assembled,

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

Recognizing that the growth of the moral principles which govern political

## CONFERENCIA INTERNACIONAL AMERICANA.

*Informes de la Comisión de Bienestar General.*

(Como quedaron adoptados por la Conferencia.)

### 1.—*Plan de Arbitraje.*

Las Delegaciones de Norte, Centro, y Sud América, reunidas en Conferencia Internacional Americana,

Creyendo que la guerra es el medio más cruel, el más incierto, el más ineficaz y el más peligroso para decidir las diferencias internacionales;

Reconociendo que el desenvolvimiento de los principios morales que gobiernan societies has created an earnest desire in favour of the amicable adjustment of such differences;

Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;

Convinced by reason of their friendly and cordial meeting in the present Conference that the American Republics, controlled alike by the principles, duties, and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent, and the good-will of all its inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves;

Do solemnly recommend all the Governments by which they are accredited to conclude a uniform Treaty of Arbitration im the Articles following:—

### ARTICLE I.

The Republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

### ARTICLE II.

Arbitration shall be obligatory in all controversies concerning Diplomatic and Consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of Treaties.

### ARTICLE III.

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing Article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following Article.

### ARTICLE IV.

The sole questions excepted from the provisions of the preceding Articles are those which, in the judgment of any one of the nations involved in the controversy may imperil its independence. In which case, for such nation, arbitration shall be

las sociedades politicas ha creado una verdadera aspiración en favor de la solución pacífica de aquellas disidencias;

Animadas por la idea de los grandes beneficios morales y materiales que la paz ofrece á la humanidad, y confiando en que la condición actual de sus respectivos paises es especialmente propicia para la consagración del arbitraje en oposición á las luchas armadas:

Convencidas, por su amistosa y cordial reunión en la presente Conferencia, de que las naciones Americanas, regidas por los principios, deberes y responsabilidades del Gobierno democrático, y ligadas por comunes, vastos y crecientes intereses, pueden, dentro de la esfera de su propia acción, afirmar la paz del continente y la buena voluntad de todos sus habitantes;

Y reputando de su deber prestar asentimiento á los altos principios de paz que proclama el sentimiento ilustrado de la opinión universal;

Encarecen á los Gobiernos que representan la celebración de un Tratado uniforme de arbitraje sobre las bases siguientes:—

### ARTICULO I.

Las Repúblicas del Norte, Centro y Sud América adoptan el arbitraje como principio de derecho internacional Americano para la solución de las diferencias, disputas ó contiendas entre dos ó más de ellas.

### ARTICULO II.

El arbitraje es obligatorio en todas las cuestiones sobre privilegios Diplomáticos y Consulares, limites, territorios, indemnizaciones, derechos de navegación, y validez, inteligencia y cumplimiento de Tratados.

### ARTICULO III.

El arbitraje es igualmente obligatorio, con la limitación del Artículo siguiente, en todas las demás cuestiones no enunciadas en el Artículo anterior, cualesquiera que sean su causa, naturaleza ú objeto.

### ARTICULO IV.

Se exceptúan únicamente de la disposición del Artículo que precede aquellas cuestiones que, á juicio exclusivo de alguna de las naciones interesadas en la contienda, comprometan su popria independencia. En este caso, el arbitraje será voluntario de optional; but it shall be obligatory upon the adversary Power.

## ARTICLE V.

All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration, even though they may have originated in occurrences antedating the present Treaty.

## ARTICLE VI.

No question shall be revived by virtue of this Treaty concerning which a definite agreement shall already have been reached. In such cases arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation, or enforcement of such agreements.

## ARTICLE VII.

The choice of Arbitrators shall not be limited or confined to American States. Any Government may serve in the capacity of Arbitrator which maintains friendly relations with the nation opposed to the one selecting it. The office of Arbitrator may also be intrusted to Tribunals of Justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the States selecting them.

## ARTICLE VIII.

The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one Arbitrator on its own behalf.

## ARTICLE IX.

Whenever the Court shall consist of an even number of Arbitrators, the nations concerned shall appoint an Umpire, who shall decide all questions upon which the Arbitrators may disagree. If the nations interested fail to agree in the selection of an Umpire, such Umpire shall be selected by the Arbitrators already appointed.

## ARTICLE X.

The appointment of an Umpire, and his acceptance, shall take place before the

parte de dicha nación, pero será obligatr para la otra parte.

## ARTICULO V.

Quedan comprendidas dentro del arbitraje las cuestiones pendientes en la actualidad, y todas las que se susciten en adelante, aún cuando provengan de hechos anteriores al presente Tratado.

## ARTICULO VI.

No pueden renovarse, en virtud de este Tratado, las cuestiones sobre que las partes tengan celebrados ya arreglos definitivos. En tales casos, el arbitraje se limitará exclusivamente á las cuestiones que se susciten sobre validez, inteligencia y cumplimiento de dichos arreglos.

## ARTICULO VII.

La elección de Arbitros no reconoce límites ni preferencias. El cargo de Arbitro no reconoce límites ni preferencias. El cargo de Arbitro puede recaer, en consecuencia, sobre cualquiera Gobierno que mantenga buenas relaciones con la parte contraria de la nación que lo escoja. Las funciones arbitrales pueden también ser confiadas á los Tribunales de Justicia, á las corporaciones científicas, á los funcionarios públicos, y á los simples particulares, sean ó no ciudadanos del Estado que los nombre.

## ARTICULO VIII.

El Tribunal puede ser unipersonal ó colectivo. Para que sea unipersonal, es necesario que las partes elijan el Arbitro de común acuerdo. Si fuere colectivo, las partes podrán convenir en unos mismos Arbitros. A falta de acuerdo, cada nación que represente un interés distinto tendrá derecho de nombrar un Arbitro por su parte.

## ARTICULO IX.

Siempre que el Tribunal se componga de un número par de Arbitros, las naciones interesadas designarán un Arbitro tercero para decidir cualquiera discordia que ocurra entre ellos. Si las naciones interesadas no se pusieren de acuerdo en la eleccíon del Tercero, la harán los Arbitros nombrados por ellas.

## ARTICULO X.

La designación y aceptación del Tercero se verificarán antes de que los Arbitros

Arbitrators enter upon the hearing of the questions in dispute.

## ARTICLE XI.

The Umpire shall not act as a member of the Court, but his duties and powers shall be limited to the decision of questions. whether principal or incidental, upon which the Arbitrators shall be unable to agree.

## ARTICLE XII.

Should an Arbitrator or an Umpire be prevented from serving by reason of death, resignation, or other cause, such Arbitrator or Umpire shall be replaced by a substitute to be selected in the same manner in which the original Arbitrator or Umpire shall have been chosen.

## ARTICLE XIII.

The Court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the Court itself may determine the location.

## ARTICLE XIV.

When the Court shall consist of several Arbitrators, a majority of the whole number may act notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the questions submitted for their consideration.

## ARTICLE XV.

The decision of a majority of the whole number of Arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

## ARTICLE XVI.

The general expenses of arbitration proceedings shall be paid in equal proportions by the Governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

## ARTICLE XVII.

Whenever disputes arise the nations involved shall appoint Courts of Arbitration in accordance with the provisions of

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principien á conocer del asunto sometido á su resolución.

## ARTICULO XI.

El Tercero no se reunirá con los Arbitros para formar Tribunal, y su encargo se limitará á decidir las discordias de aquellos, en lo principal y en los incidentes.

## ARTICULO XII.

En caso de muerte, renuncia ó impedimento sobreviniente, los Arbitros y el Tercero serán reemplazados por otros nombrados por las mismas partes y del mismo modo que lo fueron aquellos.

## ARTICULO XIII.

El Tribunal ejercerá sus funciones en el lugar designado por las partes; y si ellas no lo designaren, ó no estuvieren de acuerdo, en el que el mismo Tribunal escogiere al efecto.

## ARTICULO XIV.

Cuando el Tribunal fuere colegiado, la acción de la mayoría absoluta no será paralizada ó restringida por la inasistencia ó retiro de la minoría. La mayoría deberá, por el contrario, llevar adelante sus procedimientos y resolver el asunto sometido á su consideración.

## ARTICULO XV.

Las decisiones de la mayoría absoluta del Tribunal colectivo constituirán sentencia, así sobre los incidentes como sobre lo principal de la causa, salvo que el compromiso arbitral exigiere expresamente que el laudo sea pronunciado por unanimidad.

## ARTICULO XVI.

Los gastos generales del arbitramento serán pagados á prorata entre las naciones que sean parte en el asunto. Los que cada parte haga para su representación y defensa en el juicio serán de su cuenta.

## ARTICULO XVII.

Las naciones interesadas en la contienda formarán, en cada caso, el Tribunal Arbitral, de acuerdo con las reglas establecidas the preceding Articles. Only by the mutual and free consent of all of such nations may those provisions be disregarded, and Courts of Arbitration appointed under different arrangements.

### ARTICLE XVIII.

This Treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the Contracting Parties shall have notified all the others of its desire to determine it. In the event of such notice the Treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the Treaty with respect to the other nations concerned.

### ARTICLE XIX.

This Treaty shall be ratified by all the nations approving it, according to their respective constitutional methods; and the ratifications shall be exchanged in the city of Washington on or before the 1st day of May, A.D. 1891.

Any other nation may accept this Treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States, whereupon the said Government shall communicate this fact to the other Contracting Parties.

In testimony whereof the undersigned Plenipotentiaries have hereunto affixed their signatures and seals.

Done in the city of Washington, in copies in English, Spanish, and Portuguese, on this day of the month of , one thousand eight hundred and ninety.

### 2.—*Recommendation to European Powers.*

The International American Conference resolves:—That this Conference, having recommended arbitration for the settlement of disputes among the Republics of America, begs leave to express the wish that controversies between them and the nations of Europe may be settled in the same friendly manner.

It is further recommended that the Government of each nation herein represented communicate this wish to all friendly Powers.

### 3.—*The Right of Conquest.*

Whereas the International American Conference feels that it would fall short

en los Artículos precedentes. Solo por mútuo y libre consentimiento de todas ellas, podrán separarse de dichas disposiciones para constituir el Tribunal en condiciones diferentes.

### ARTICULO XVIII.

Este Tratado subsistirá durante veinte años contados desde la fecha del canje de las ratificaciones. Concluido este término, seguirá en vigor hasta que alguna de las Partes Contratantes notifique á las otras su deseo de que caduque. En este caso, continuará subsistente hasta que transcurra un año desde la fecha de dicha notificación. Es entendido, sin embargo, que la separación de alguna de las Partes Contratantes no invalidará el Tratado respecto de las otras partes.

### ARTICULO XIX.

Este Tratado se ratificará por todas las naciones que lo aprueben, conforme á sus respectivos procedimientos constitucionales; y las ratificaciones se canjearán en la Ciudad de Washington, el dia 1° de Mayo de 1891, ó antes si fuere posible.

Cualquiera otra nación puede adherir á este Tratado y ser tenida como parte en el, firmando un ejemplar del mismo, y depositándolo ante el Gobierno de los Estados Unidos, el cual hará saber este hecho á las otras Partes Contratantes.

En fé de lo cual, los infrascritos Plenipotenciarios han puesto sus firmas y sellos.

Hecho en la Ciudad de Washington, en ejemplares en Inglés, Español, y Portugués, á los dias del mes de , de mil ochocientos noventa.

### 2.—*Recomendación sobre Arbitraje con Potencias Europeas.*

La Conferencia Internacional Americana resuelve:—Que habiendo recomendado esta Conferencia el arbitrage para la decisión de las disputas entre las Repúblicas de América, se permite expresar el deseo de que las controversias entre ellas y las naciones de Europa sean decididas por el mismo amistoso medio.

La Conferencia recomienda ademas que los respectivos Gobiernos de las naciones en ella representadas comuniquen este voto á todas las Potencias amigas.

### 3.—*Derecho de Conquista.*

Considerando: Que la Conferencia Internacional Americana no llenaria la parte of the most exalted conception of its mission were it to abstain from embodying its pacific and fraternal sentiments in declarations tending to promote national stability and guarantee just international relations among the nations of the continent: Be it therefore

*Resolved,*—That it earnestly recommends to the Governments therein represented the adoption of the following declarations:—

First. That the principle of conquest shall not, during the continuance of the Treaty of Arbitration, be recognized as admissible under American public law.

Second. That all cessions of territory made during the continuance of the Treaty of Arbitration shall be void if made under threats of war or the presence of an armed force.

Third. Any nation from which such cessions shall be exacted may demand that the validity of the cessions so made shall be submitted to arbitration.

Fourth. Any renunciation of the right to arbitration made under the conditions named in the second section shall be null and void.

mas elevada du su misión si se abstuviera de consagrar sus aspiraciones pacíficas y fraternales por medio de declaraciones que consoliden los vínculos nacionales y afianzen las relaciones internacionales de todos los estados del continente:

*Resuelve,*—Encarecer á los Gobiernos representados en ella, la adopcíon de las siguientes declaraciones:—

Primera. El principio de conquista queda eliminado del derecho público Americano, durante el tiempo que esté en vigor el Tratado de Arbitrage.

Segunda. Las cesiones de territorios que se hicieren durante el tiempo que subsista el Tratado de Arbitrage serán nulas, si se hubieren verificado bajo la amenaza de la guerra, ó la presión de la fuerza armada.

Tercera. La nación que hubiere hecho tales cesiones tendrá derecho para exigir que se decida por arbitramento acerca de la validez de ellas.

Quarta. La renuncia del derecho de recurrir al arbitrage, hecha en las condiciones del Artículo segundo, carecerá de valor y eficacia.

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## No. 5.

### *Mr. A. St. John to the Marquis of Salisbury.—(Received October* 9.)

My Lord, *Quito, August* 29, 1890.

HEREWITH I have the honour to inclose copy of the English version of the Treaty of Arbitration signed at Washington on the 28th April, 1890, by the Representatives of the Republics of Bolivia, Ecuador, Guatemala, Haïti, Honduras, Nicaragua, Salvador, the United States of America, and the United States of Brazil.*

This Treaty has been approved by the Equatorian Congress, but the ratifications have not yet been exchanged.

I have, &c.
(Signed) ALFRED ST. JOHN.

---

## No. 6.

### *Mr. White to the Marquis of Salisbury.—(Received November* 12.)

*Legation of the United States, London,*
My Lord, *November* 10, 1890.

I HAVE the honour to transmit herewith to your Lordship the copy of a Circular instruction, with its inclosures, relative to international arbitration, which I have just received from the Secretary of State, and to acquaint you that the President of the United States trusts that the important objects now sought to be obtained by the formal acceptance of the cause of arbitration by the nations of the earth may favourably impress themselves upon Her Majesty's Government.

I have, &c.
(Signed) HENRY WHITE.

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* See Inclosure 3 in No. 6.

## Inclosure 1 in No. 6.

*Mr. Blaine to Mr. White.*

(Circular.)

Sir, *Department of State, Washington, October* 23, 1890.

YOU will perceive by the inclosed copy of the Minutes of the late International American Conference, dated the 18th April, 1890, p. 3, that a Resolution was passed as follows:—

"That this Conference, having recommended arbitration for the settlement of all disputes among the Republics of America, begs leave to express the wish that all controversies between them and the nations of Europe may be settled in the same friendly manner.

"It is further recommended that the Government of each nation herein represented communicate this wish to all friendly Powers."

With this Resolution the Conference submitted and recommended a form of an Arbitration Treaty. This Treaty has been formally signed by ten of the eighteen Governments represented in the Conference, and it is reasonably expected that a majority of those not yet signing will soon become parties to this important instrument.

Article XIX of the Treaty provides:—

"That any other nation may accept this Treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States, whereupon the said Government shall communicate this fact to the other Contracting Parties."

In accordance with the Resolution of the Conference, you will communicate to the Government to which you are accredited a copy of this instruction, and say that the President trusts that the important objects now sought to be obtained by the formal acceptance of the cause of arbitration by the nations of the earth may favourably impress themselves upon that Government.

I am, &c.

(Signed) JAMES G. BLAINE.

---

## Inclosure 2 in No. 6.

*Extract from the Minutes of the International American Conference, 69th day, April* 18, 1890.

THE Chair announced that the order of the day called for the consideration of the following Report of the Committee on General Welfare:—

"The International American Conference resolves: That this Conference, having recommended arbitration for the settlement of all disputes among the Republics of America, begs leave to express the wish that all controversies between them and the nations of Europe may be settled in the same friendly manner.

"It is further recommended that the Government of each nation herein represented communicate this wish to all friendly Powers."

The vote having been taken on the Report as a whole, resulted in its unanimous adoption.

The Delegations voting were: Haïti, Nicaragua, Peru, Guatemala, Colombia, Argentine, Costa Rica, Paraguay, Brazil, Honduras, Mexico, Bolivia, United States, Venezuela, Salvador, and Ecuador.

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## Inclosure 3 in No. 6.

*Form of Arbitration Treaty.*

THE Republics of

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

Recognizing that the growth of the moral principles which govern political societies has created an earnest desire in favour of the amicable adjustment of such differences;

Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;

Convinced, by reason of their friendly and cordial meeting in the recent Conference, that the American Republics, controlled alike by the principles, duties, and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace and good-will of all their inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves;

To the end of concluding a uniform Treaty of Arbitration, have named as their Plenipotentiaries the following:

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles, being the same that were solemnly recommended by the International American Conference which was convened in Washington on the 2nd day of October, 1889, and adjourned on the 19th day of April, 1890:—

## ARTICLE I.

The Republics uniting in this Convention hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

## ARTICLE II.

Arbitration shall be obligatory in all controversies concerning Diplomatic and Consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of Treaties.

## ARTICLE III.

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing Article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following Article.

## ARTICLE IV.

The sole questions excepted from the provisions of the preceding Articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In this event, for such nation, arbitration shall be optional; but it shall be obligatory upon the adversary Power when demanded.

## ARTICLE V.

All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration, even though they may have originated in occurrences antedating the present Treaty.

## ARTICLE VI.

No question shall be revived by virtue of this Treaty concerning which a definite agreement shall already have been reached. In such cases arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation, or enforcement of such agreements.

## ARTICLE VII.

The choice of Arbitrators shall not be limited or confined to American States. Any Government may serve in the capacity of Arbitrator which maintains friendly relations with the nation opposed to the one selecting it. The office of Arbitrator may also be intrusted to Tribunals of Justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the States selecting them.

## ARTICLE VIII.

The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one Arbitrator on its own behalf.

## ARTICLE IX.

Whenever the Court shall consist of an even number of Arbitrators, the nations concerned shall appoint an Umpire, who shall decide all questions upon which the Arbitrators may disagree. If the nations interested fail to agree in the selection of an Umpire, such Umpire shall be selected by the Arbitrators already appointed.

## ARTICLE X.

The appointment of an Umpire, and his acceptance, shall take place before the Arbitrators enter upon the hearing of the questions in dispute.

## ARTICLE XI.

The Umpire shall not act as a member of the Court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the Arbitrators shall be unable to agree.

## ARTICLE XII.

Should an Arbitrator or an Umpire be prevented from serving by reason of death, resignation, or other cause, such Arbitrator or Umpire shall be replaced by a substitute to be selected in the same manner in which the original Arbitrator or Umpire shall have been chosen.

## ARTICLE XIII.

The Court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the Court itself may determine the location.

## ARTICLE XIV.

When the Court shall consist of several Arbitrators, a majority of the whole number may act notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the questions submitted for their consideration.

## ARTICLE XV.

The decision of a majority of the whole number of Arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

## ARTICLE XVI.

The general expenses of arbitration proceedings shall be paid in equal proportions by the Governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

## ARTICLE XVII.

Whenever disputes arise the nations involved shall appoint Courts of Arbitration in accordance with the provisions of the preceding Articles. Only by the mutual and free consent of all of such nations may those provisions be disregarded, and Courts of Arbitration be appointed under different arrangements.

### ARTICLE XVIII.

This Treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the Contracting Parties shall have notified all the others of its desire to terminate it. In the event of such notice the Treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the Treaty with respect to the other nations concerned.

### ARTICLE XIX.

This Treaty shall be ratified by all the nations approving it, according to their respective constitutional methods; and the ratifications shall be exchanged in the city of Washington on or before the 1st day of May, A.D. 1891.

Any other nation may accept this Treaty and become a party thereto, by signing a copy thereof and depositing the same with the Government of the United States; whereupon the said Government shall communicate this fact to the other Contracting Parties.

In testimony whereof the undersigned Plenipotentiaries have hereunto affixed their signatures and seals.

Done in the city of Washington, in copies in English, Spanish, and Portuguese, on this day of the month of , one thousand eight hundred and ninety.

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## No. 7.

*The Marquis of Salisbury to Mr. White.*

Sir, *Foreign Office, November* 15, 1890.

I HAVE the honour to acknowledge the receipt of your note of the 10th instant, in which, by direction of the President of the United States, you invite the attention of Her Majesty's Government to a Resolution agreed upon by the International American Conference, and to a draft Treaty, with the object of settling by arbitration all disputes which may arise between the Republics of America and the nations of Europe.

I beg to thank you for this communication, and to assure you that it shall receive the careful consideration of Her Majesty's Government.

I have, &c.
(Signed) SALISBURY.

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## No. 8.

*Mr. Pakenham to the Marquis of Salisbury.—(Received December* 4.)

My Lord, *Buenos Ayres, November* 3, 1890.

I HAVE the honour to transmit herewith copy and translation of a note from the Paraguayan Minister for Foreign Affairs, inclosing, for transmission to Her Majesty's Government, a copy of the Resolution passed by the recent Pan-American Congress on the subject of arbitration as a means of settling international differences.

I have, &c.
(Signed) F. PAKENHAM.

## Inclosure 1 in No. 8.

*Señor Centurion to Mr. Pakenham.*

(Translation.) *Department of Foreign Affairs, Asuncion, October 18, 1890.*

M. le Ministre,

THE International Conference of Washington, among other important acts during its session, expressed the desire that all the controversies between the American Republics, and between them and European nations, should be settled by arbitration, as the most equitable and reasonable means of adjusting such controversies in an amicable manner, thus avoiding the employment of force, which always has deplorable consequences, contrary to the humane sentiments which distinguish civilization in this century, recommending to the respective Governments of the nations represented therein that they should communicate this decision to all friendly Powers.

In compliance with the said recommendation, and in obedience to the instructions of my Government, I have the honour to address myself to that of Her Britannic Majesty, through the medium of your Excellency, inclosing an exact copy of the Resolution passed by the Committee of General Welfare on the 11th April of the current year, which was approved by the above-mentioned Congress of Washington, hoping that it will meet with a benevolent reception on the part of Her Britannic Majesty, and that she will be pleased to afford it the powerful support of her influence, with the view to the adoption of a course of action which is so perfectly in harmony with the humane sentiments which have always served as the guiding principle of the policy of Her Majesty's Government.

I avail, &c.

(Signed) JUAN C. CENTURION.

---

## Inclosure 2 in No. 8.

### International American Conference.

*Resolution of the Committee of General Welfare.*

(Translation.)

THE International American Conference resolves: That this Conference, having recommended arbitration for the decision of all disputes between the Republics of America, permits itself to express the desire that all the controversies between them and the nations of Europe should be settled by the same means.

The Conference furthermore recommends that the respective Governments of the nations represented therein should communicate this decision to all friendly Powers.

(Signed) J. B. HENDERSON.
MANUEL QUINTANA.
J. M. HURTADO.
FERNANDO CRUZ.
N. BOLET PERAZA.
J. G. DO AMARAL VALENTE.
JUAN FRANCO. VELARDE.

*Washington, April* 11, 1890.

True copy of the original:
(Signed) C. PASSOLI.

---

## No. 9.

*The Marquis of Salisbury to Mr. Pakenham.*

Sir, *Foreign Office, December* 8, 1890.

IN reply to your despatch of the 3rd ultimo, I have to request that you will inform the Paraguayan Minister for Foreign Affairs, in answer to his note of the 18th October, that the Resolution passed by the recent Pan-American Congress on the subject of arbitration has already been communicated by the Government of the United States of

America to Her Majesty's Government, who have replied that it shall receive their attentive consideration.

I am, &c.
(Signed) SALISBURY.

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## No. 10.

*Sir J. Pauncefote to the Marquis of Salisbury.—(Received October* 28.)

My Lord, *Washington, October* 20, 1891.

THE proceedings of the Œcumenical Methodist Council, now sitting at Washington, have attracted considerable attention in this country, and on the 17th instant the President of the United States delivered an Address before that body on the subject of international arbitration.

In view of the large number of British delegates who attended the Council in this city, and also of the announcement that the President would deliver the above-mentioned Address, I thought it advisable to attend the meeting, and I was glad to observe that my presence appeared to give satisfaction to the delegates.

I have the honour to inclose a Report of the proceedings with the text of the President's Address.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

---

## Inclosure in No. 10.

*Extract from the "New York Tribune" of October* 18, 1891.

*Address delivered by the President of the United States before the Œcumenical Methodist Council at Washington on October* 17, 1891.

Mr. Chairman and Gentlemen of the Conference,

I CAME here this morning to make an expression of my respect and esteem for this great body of delegates assembled from all the countries of the world, and much more to give a manifestation of my respect and love for that greater body of Christian men and women for whom you stand. (Applause.) Every Œcumenical Conference is a distinct step in the direction, not only of the unification of the Church, but of the unification of humanity. Assembling from countries unlike in their civil institutions, their Church not wholly in accord as to doctrine and Church order, you come together to find that the unlikeness is not so great as you had thought (cries of hear, hear, from the English delegates), and to find this common sympathy and common purpose greater and larger than you had thought—large enough presently to overspread and extinguish all those transitory lesions and divisions. (Applause.) I am glad to know that, as the followers of Wesley, whose hymns we sing, you have been in consultation as to the method and time when these minor divisions among you may be obliterated. It is the natural order that subdivisions should be wiped out before the grand divisions of the Church can be united. Who does not greatly rejoice that the controversial clash of the Church is less than it once was; that we hear more of the work of the Master and His teachings of love and duty than of hair-splitting and theological dissensions? I recall many years ago, while visiting a watering-place in Wisconsin, that when the Sabbath came around I went with some friends to a little Methodist church in an adjoining village. The preacher undertook to overturn my Presbyterianism (laughter), and an irreverent friend who sat beside me, as the young man delivered his telling blasts against Calvinism, was constantly emphasizing the points made by nudges of his elbow. I am glad to recall that, although since then I have worshipped in Methodist churches, that was the last experience of that kind I have had. (Hear, hear.)

You have to-day as the theme of discussion the subject of international arbitration, and, this being a public and enlarged use of the word, perhaps makes my presence here as an officer of the United States specially appropriate. (Applause.) It is a curious incident that on this day, appointed by me some days ago, and before I was aware of the theme of the occasion which we have here this morning, I had appointed this afternoon to visit the great gun foundry of the United States at the Navy Yard. Things have come in their proper sequence. I am here at this arbitration meeting before I go to the gun foundry. This subject is one which has long attracted the attention, and I think I may say has as greatly attracted the interest and adherence, of the United States as that of any other Christian Power in the world. (Applause.)

It is known to you all that in the recent Conference of the American States at Washington the proposition was distinctly made and adopted by the Representatives of all, or nearly all, of the Governments represented, that, as applied to this hemisphere, all international disputes should be settled by arbitration. (Applause.) Of course, there are limitations as yet, in the nature of things, to the complete and general adoption of such a scheme. It is quite possible to apply arbitration to a dispute as to a boundary-line; it is quite impossible, it seems to me, to apply it to a case of international feud. If there is present a disposition to subjugate, an aggressive spirit to seize territory, a spirit of national aggrandizement that does not stop to consider the rights of other men and other people, to such a case and to such a spirit international arbitration has no, or, if any, a remote and difficult application. It is for a Christian sentiment, manifesting itself in the fair international arbitration. (Applause.)

But I did not intend to enter into a discussion of the theme for the setting forth of which you have with deliberation appointed those who have given it attention. Let me therefore say simply this: For myself, temporarily in a place of influence in this country, and much more for the great body of its citizenship, the desire of America is for peace with the whole world. (Applause.) It would have been vain to suggest the pulling down of block-houses and family disarmament to one of the settlers on the hostile Indian frontier. He would have told you rightly that the times were not right. And so it may be, and is probably true, the Devil still being unchained (hear), that we should have our gun foundries, and that we shall best promote the settlement of international disputes by arbitration when it is understood that if the appeal is to some other tribunal we shall be not unprepared. (Applause.) There is one unity of the Church, and but one of humanity. It is through this great Christian sentiment, characterized by a high sense of justice, and by a spirit of love and forbearance imposed on civil institutions and civil Governments of the world, that we shall approach best arbitration methods of settling disputes. Let me thank you, Mr. Chairman, and you, gentlemen of the Conference, for the privilege of standing before you for a moment, and for this most cordial welcome you have given me. I beg to renew my high appreciation of the character of this delegation, and the membership of the great Church from which you come. I hope that in your remaining deliberations, and in your journeys to your far distant homes, you may have the guidance of that God whom we all revere and worship.

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## No. 11.

*Mr. Herbert to the Marquis of Salisbury.*—(*Received August* 15.)

My Lord, *Newport, Rhode Island, August* 5, 1892.

I HAVE the honour to inclose copies of a Bill which was introduced in the Senate on the 23rd ultimo by Senator Sherman for the creation of a Tribunal for International Arbitration.

I have, &c.
(Signed) MICHAEL H. HERBERT.

---

## Inclosure in No. 11.

*52nd Congress, 1st Session.*—S. 3468.

IN THE SENATE OF THE UNITED STATES.

*July* 23, 1892.—Mr. Sherman introduced the following Bill, which was read twice and referred to the Committee on Foreign Relations.

*A Bill to promote Peace among Nations, and for the creation of a Tribunal for International Arbitration.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and hereby is, authorized to appoint a Commission to visit such other Governments as he in his discretion may determine, for the purpose of instituting negotiations with them for the creation of a Tribunal for International Arbitration, or other appropriate means whereby all difficulties and disputes between nations may be peaceably and amicably settled and wars prevented.

Sec. 2. That the sum of 50,000 dollars, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to defray the necessary expenses attendant upon such negotiation.

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## No. 12.

### *The Earl of Rosebery to Sir J. Pauncefote.*

Sir, *Foreign Office, July* 28, 1893.

I TRANSMIT to your Excellency copy of a Resolution which was passed in the House of Commons on the 16th ultimo, expressing sympathy with the action taken by the Congress of the United States in favour of the settlement of international disputes by arbitration.

Her Majesty's Government have pleasure in bringing this Resolution to the knowledge of the Government of the United States, and would be glad if the President should see fit to lay it before both Houses of Congress.

I request that your Excellency will communicate a copy of this Resolution to the Secretary of State, with an intimation to the above effect.

I am, &c.
(Signed) ROSEBERY.

---

## Inclosure in No. 12.

### *Resolution.*

*Resolved,*—That this House has learnt with satisfaction that both Houses of the United States' Congress have, by Resolution, requested the President to invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States have or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which cannot be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, expresses the hope that Her Majesty's Government will lend their ready co-operation to the Government of the United States upon the basis of the foregoing Resolution.

# UNITED STATES. No. 9 (1893).

CORRESPONDENCE respecting a Proposal made by the Government of the United States for the Settlement of International Disputes by Arbitration.

*Presented to both Houses of Parliament by Command of Her Majesty. August* 1893.

LONDON:
PRINTED BY HARRISON AND SONS.

UNITED STATES. No. 12 (1893).

# FURTHER CORRESPONDENCE

RESPECTING A

# PROPOSAL MADE BY THE GOVERNMENT OF THE UNITED STATES

FOR THE

# SETTLEMENT OF INTERNATIONAL DISPUTES BY ARBITRATION.

[In continuation of "United States No. 9 (1893):" C. 7103.]

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*Presented to both Houses of Parliament by Command of Her Majesty.*
*December* 1893.

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# Further Correspondence respecting a Proposal made by the Government of the United States for the Settlement of International Disputes by Arbitration.

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[In continuation of "United States No. 9 (1893):" C. 7103.]

---

## No. 1.

*Sir J. Pauncefote to the Earl of Rosebery.—(Received December* 16.)

My Lord, *Washington, December* 7, 1893.

IN accordance with the instructions contained in your Lordship's despatch of the 28th July last, I transmitted to the United States' Secretary of State the copy of the Resolution passed by the Houses of Commons expressing sympathy with the action taken by Congress in favour of the settlement of international disputes by arbitration, and I informed Mr. Gresham that Her Majesty's Government would be glad, if the President should see fit, to lay it before both Houses of Congress.

I have now the honour to inclose copy of Mr. Gresham's reply, which is dated on the 4th instant, and in which, after stating that it had been unavoidably deferred, he informs me that the President will feel great satisfaction in bringing the Resolution in question to the knowledge of Congress in his forthcoming annual Message.

I transmitted to your Lordship a copy of this Message, which was communicated to Congress on the 4th instant, in my despatch of the 5th instant, and your Lordship will observe that, in alluding, on p. 10, to the receipt of the Resolution, President Cleveland remarks: "It affords me signal pleasure to lay this Parliamentary Resolution before the Congress, and to express my sincere gratification that the sentiment of two great and kindred nations is thus authoritatively manifested in favour of the rational and peaceable settlement of international quarrels by honourable resort to arbitration."

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

---

## Inclosure in No. 1.

*Mr. Gresham to Sir Julian Pauncefote.*

*Department of State, Washington,*
Excellency, *December* 4, 1893.

WITH regard to your note of the 9th August, 1893, of which acknowledgment has been hitherto unavoidably deferred, I have now the pleasure to inform you that the President will feel great satisfaction in bringing to the knowledge of the Congress, in his forthcoming annual Message, the Resolution of the House of Commons of the 16th July last, whereby that high body expressed its cordial sympathy with the action taken by the Senate and House of Representatives in the concurrent Resolution of the 14th February and 3rd April, 1890, requesting the President " to invite from time to time, as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means."

In manifesting the hope that Her Majesty's Government will lend their cordial co-operation to the Government of the United States upon the basis of this concurrent Resolution of Congress, the House of Commons has afforded a most gratifying proof of the sentiment of the two nations in favour of the settlement of international disagreements by honourable resort to impartial arbitration, a mode of adjustment of which the United States and Great Britain have, by mutual accord, given to the world conspicuous illustration on several recent occasions.

I have, &c.
(Signed) W. Q. GRESHAM.

# UNITED STATES. No. 12 (1893).

FURTHER Correspondence respecting a Proposal made by the Government of the United States for the Settlement of International Disputes by Arbitration.

[In continuation of "United States No. 9 (1893):" C. 7103.]

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*Presented to both Houses of Parliament by Command of Her Majesty. December* 1893.

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LONDON:
PRINTED BY HARRISON AND SONS.

EGYPT. No. 1 (1893).

# FURTHER CORRESPONDENCE

RESPECTING THE

# AFFAIRS OF EGYPT.

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*Presented to both Houses of Parliament by Command of Her Majesty.*
*January* 1893.

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# Further Correspondence respecting the Affairs of Egypt.

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## No. 1.

*Lord Cromer to the Earl of Rosebery.—(Received December 26.)*

(Telegraphic.) *Cairo, December* 26, 1892.

MUSTAPHA PASHA FEHMY is somewhat seriously ill.

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## No. 2.

*Lord Cromer to the Earl of Rosebery.—(Received December 29.)*

(Telegraphic.) *Cairo, December* 29, 1892.

MUSTAPHA PASHA FEHMY has congestion of both lungs. English doctor who is attending him considers his condition critical.

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## No. 3.

*Lord Cromer to the Earl of Rosebery.—(Received December 29.)*

(Telegraphic.) *Cairo, December* 29, 1892.

SIR ELWIN PALMER has had a conversation with Khedive about Ministerial arrangements which will become necessary in the not improbable event of the death of the present Prime Minister.

Best thing he could do would be to appoint Riaz Pasha.

He is the only Mahommedan here who has any influence.

I do not think it will become necessary for me to interfere directly, and unless Khedive should wish to make any highly objectionable appointment I propose standing aloof as much as possible.

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## No. 4.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, December* 29, 1892.

YOUR telegram of to-day.

I concur.

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## No. 5.

*Lord Cromer to the Earl of Rosebery.—(Received December 31.)*

(Telegraphic.) *Cairo, December* 31, 1892.

I REGRET to say doctors now give very little hope of Mustapha Pasha Fehmy's recovery.

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### No. 6.

*Lord Cromer to the Earl of Rosebery.—(Received January* 1.)

(Telegraphic.) *Cairo, January* 1, 1893.

I SHALL have an interview this afternoon with His Highness the Khedive.

There is a very slight improvement in Mustapha Pasha's condition. His medical advisers consider that though improbable, it is just possible that he may recover.

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### No. 7.

*Lord Cromer to the Earl of Rosebery.—(Received January* 1.)

(Telegraphic.) *Cairo, January* 1, 1893.

THE Khedive, whom I have seen, desires Tigrane Pasha's appointment as Prime Minister on the ground that it is very difficult to find another suitable man. I have discouraged the idea, as I consider it advisable that the Prime Minister should, under present circumstances, be a Mahommedan.

Reports are current here of the Khedive's intention, and have met with a very unfavourable reception both by the English officials and the natives generally.

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### No. 8.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 1, 1893.

YOUR telegram of to-day.

I agree that it would be advisable to have a Mahommedan.

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### No. 9.

*Lord Cromer to the Earl of Rosebery.—(Received January* 2.)

(Telegraphic.) *Cairo, January* 2, 1893.

MUSTAPHA PASHA FEHMY is slightly better, and it may, perhaps, not be necessary to name a successor at present.

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### No. 10.

*Lord Cromer to the Earl of Rosebery.—(Received January* 3.)

(Telegraphic.) *Cairo, January* 3, 1893.

A SHARP encounter has taken place at Ambigol, not far south of Sarras, between the Egyptian Camel Corps and the Dervishes. It appears that the Camel Corps were defeated. The Egyptian losses have not yet been ascertained, but it is believed that Captain Pyne, the English commanding officer, has been killed, together with two native officers.

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### No. 11.

*Lord Cromer to the Earl of Rosebery.—(Received January* 3.)

(Telegraphic.) *Cairo, January* 3, 1893.

AS there now seems every probability of Mustapha Pasha Fehmy's recovery, I have made no further representation to the Khedive. Tigrane Pasha has strongly advised the Khedive to name some one else.

## No. 12.

*Lord Cromer to the Earl of Rosebery.—(Received January* 3.)

(Telegraphic.) *Cairo, January* 3, 1893.

INTELLIGENCE has been received confirming the death of Captain Pyne. The loss of the Egyptians appears to be about fifty men. The Dervishes have retreated up the Nile.

It is stated in reports from Tokar that Osman Digna will shortly start on another raiding expedition.

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## No. 13.

*Lord Cromer to the Earl of Rosebery.—(Received January* 3.)

(Telegraphic.) *Cairo, January* 3, 1893.

IT has been proposed that a certain portion of the economies resulting from the conversion of the debt should be applied to increasing the Egyptian army. I have now the honour to state that the French Government has refused its assent to this scheme.

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## No. 14.

*General Officer Commanding in Egypt to War Office.—(Communicated to Foreign Office, January* 3.)

(Telegraphic.) *Cairo, January* 3, 1893.

DERVISH raiding parties penetrated frontier 2nd January, driven away by troops. Attempted storm Sarras, repulsed, and Dervishes retreated precipitately. Mounted troops pursued; Camel Corps met with enemy in force at Ambigol dawn yesterday, attacked them and captured camels; enemy's footmen then charged Camel Corps, who were compelled to retire with loss of, regret to say, about forty men, three native officers, and Captain Pyne, who was in command.

Body of Pyne reported as buried by D'Aguilar. Dervish force 600 camelmen under Hamuda, and 350 cavalry and camelmen under Osman Azrak.

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## No. 15.

*Lord Cromer to the Earl of Rosebery.—(Received January* 6.)

(Telegraphic.) *Cairo, January* 6, 1893.

I HAVE the honour to report that the Dervish cavalry apparently surprised the Egyptian Camel Corps, cutting them off from their camels, from which they had dismounted. In the hand-to-hand fight which then ensued the Egyptian troops were overpowered by numbers, the exact loss being: Captain Pyne, 1 Egyptian field officer, 26 men of the Camel Corps, 8 irregulars, 2 hospital orderlies, and 95 camels; 15 men were wounded. The body of Captain Pyne has been recovered and brought into Wady Halfa. The Dervish loss would appear to have been very heavy.

I am sending fuller details by mail.

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## No. 16.

*Lord Cromer to the Earl of Rosebery.—(Received January* 13.)

(Telegraphic.) *Cairo, January* 13, 1893.

I HAVE the honour to report that we recently heard that 700 men from Berber were about to reinforce Osman Digna, who was contemplating a further advance. This intelligence is, however, not confirmed by our latest news.

No special measures are, I think, required beyond the execution of the orders already sent to Colonel Hunter.

## No. 17.

*Lord Cromer to the Earl of Rosebery.*—(*Received January* 15.)

(Telegraphic.) *Cairo, January* 15, 1893.

THE last time I saw Khedive it was fully understood that as Mustapha Pasha Fehmy was recovering there was no longer any question of naming another Prime Minister. This morning Khedive's Private Secretary came to inform me that Mustapha Pasha Fehmy was dismissed, and Fakhry Pasha named in his place. He was formerly Minister of Justice, and was dismissed on my advice, as he was opposed to Judicial Reform. I have seen Khedive. He bases change on the argument that Musfapha Pasha Fehmy's state of health will not allow him to take up his work for some long while. There is no reason why he should be absent for more than six weeks. The intention to make the change is generally known, but the Khedive has promised me to stop issue of any official notification till I could communicate with your Lordship. I beg to refer to Lord Granville's despatch of 4th January, 1884,* on the subject of English advice being followed whilst the occupation lasts. The action of the Khedive must change the whole situation both of the British Government and the English officials, and great trouble will ensue

Khedive also wishes to change his Ministers of Finance and Justice. To these changes I would offer no objection. I wish to impress very strongly on Her Majesty's Government importance of the present question.

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## No. 18.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 16, 1893.

YOUR telegram of yesterday.

Her Majesty's Government expect to be consulted in such important matters as a change of Ministers. No change appears to be at present either necessary or peremptory. We cannot, therefore, sanction the proposed nomination of Fakhry Pasha.

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## No. 19.

*Lord Cromer to the Earl of Rosebery.*—(*Received January* 16.)

(Telegraphic.) *Cairo, January* 16, 1893.

I HEAR rumours from a fairly good source that if Khedive is successful in his present undertaking, the next step will be a wholesale dismissal of English officials.

The latter, acting on my instructions, have declined to recognize new Ministers pending receipt of instructions from London.

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## No. 20.

*Lord Cromer to the Earl of Rosebery.*—(*Received January* 17.)

(Telegraphic.) *Cairo, January* 17, 1893.

I PROPOSE to make communication contained in your Lordship's telegram of the 16th to-morrow morning.

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## No. 21.

*Lord Cromer to the Earl of Rosebery.*—(*Received January* 17.)

(Telegraphic.) *Cairo, January* 17, 1893.

I HAVE seen the Khedive, and given him a copy of your Lordship's telegram dated yesterday. In doing so I said that, in the event of his agreeing to reinstate Mustapha

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* See Appendix.

Pasha Fehmy as Prime Minister, no objection would be offered to the proposed changes as regards the Departments of Finance and Justice. In the contrary event, I must reserve the liberty of action of Her Majesty's Government as regards all these Ministers. I said I did not think it would be just of me to press him for an immediate answer, and that unless he sent for me at an earlier date I would call to-morrow morning to hear his answer. I added that it was not yet too late to yield, and that I earnestly hoped he would do so, as otherwise affairs might become more serious and complicated. The Khedive said nothing from which I could gather probable nature of his reply.

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## No. 22.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 17, 1893.

YOUR Lordship should inform the Khedive, in case of his refusing to take your advice, that His Highness must be prepared to take the grave consequences of his act, and that you must at once refer to Her Majesty's Government for instructions.

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## No. 23.

*The Earl of Rosebery to the Marquis of Dufferin.*

My Lord, *Foreign Office, January* 17, 1893.

THE French Ambassador inquired to-day about the recent proposed change of Ministry in Egypt, and its causes.

As to the facts, I told him I could give him no more information than appeared in the papers, except that we had presented our formal protest against the appointment of the new Prime Minister.

M. Waddington intimated that our course of action appeared to indicate that we claimed the right to nominate the Prime Minister ourselves. I said that that was not the way in which I should put the matter, but we did claim the right to give authoritative advice, in conformity with the terms of Lord Granville's despatch of the 4th January, 1884,* as to the choice of Ministers. Indeed, so long as the British flag was there, and British forces were in occupation, it would not be possible for us to allow the whole Administration, beginning at the top, to be reversed at the mere whim of the Khedive. The situation was undoubtedly grave, and I trusted that the Khedive would be brought to a more reasonable frame of mind without further measures.

The Ambassador then said he had received a despatch from his Government stating that in conversation the Khedive had stated that when there was a question of nominating a successor to Mustapha Pasha Fehmy, then at the point of death, Lord Cromer had refused the sanction of Her Majesty's Government to the appointment of any Christian Prime Minister. I expressed my belief that Lord Cromer had used no such general expression.

The French Government, M. Waddington went on to say, believed that the Khedive had been moved to this serious action by irritation at hearing that Lord Cromer had assured Mustapha Pasha Fehmy of his support even against the Khedive, his master.

I rejoined that I was not aware of this report, which was probably due to mere exaggeration by some member of the Khedive's Court.

I am, &c.

(Signed) ROSEBERY.

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## No. 24.

*Lord Cromer to the Earl of Rosebery.—(Received January* 18.)

(Telegraphic.) *Cairo, January* 18, 1893.

I SAW Khedive. His Highness expressed his regret at occurrence of recent incident, and pointed out that it would humiliate him and make him lose all his authority in the country if he were obliged to reinstate Mustapha Pasha Fehmy. He therefore begged Her Majesty's Government not to insist on this point. He was prepared to name Riaz Pasha in the place of Fakhri. Further, he said that his earnest wish was to entertain most friendly relations with British Government, and that for the future he would be willing to follow advice of Her Majesty's Government on all important matters. I took upon me to say, without waiting to refer matter home, that I would accept Khedive's proposal as a final settlement of the matter. I trust Her Majesty's Government will approve.

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* See Appendix.

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## No. 25.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 18, 1893.

YOUR Lordship's proceedings as reported in your telegram of to-day are approved by Her Majesty's Government, who are satisfied with the result.

You should inform the Khedive that the sound judgment exercised by His Highness in retracing as quickly as possible the untoward course which he had taken is a source of gratification to Her Majesty's Government, who note with pleasure the solemn assurances of his desire to work in cordial co-operation with them, and to follow their advice in all matters of importance.

We must no doubt be prepared for a possible renewal of these incidents, and I will communicate to you a fresh expression of my views as soon as possible.

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## No. 26.

*The Earl of Rosebery to the Marquis of Dufferin.*

My Lord, *Foreign Office, January* 18, 1893.

AT a further interview with the French Ambassador to-day, his Excellency stated that he was instructed by his Government to lay a formal protest against the action taken by Lord Cromer with regard to the nomination of Fakhry Pacha as Prime Minister in Egypt. What the French Government chiefly objected to was the high-handed nature of the proceeding. It amounted to this, that the Khedive was not to appoint any Minister except at the good-will and pleasure of Her Majesty's Government. Such an event was unprecedented in the history of the British occupation. It went, in the opinion of the French Government, far beyond the terms of Lord Granville's despatch and would, his Excellency feared, be taken throughout Europe, as in France, to be a long step in the direction of actual annexation.

As regards the nature of the proceeding, I said in my reply to M. Waddington that I was aware that there had been some high-handedness; but that it had been on the part of the Khedive who, without notice, warning, or consultation, had selected as his Prime Minister a person notoriously unfitted for the position. To admit such a pretension would be to deprive the British Occupation of any reason for existence, as it would open the door to the very maladministration to prevent which this country had, in concert with France, intervened in Egypt. For, as a matter of fact, if His Highness had "carte blanche" to appoint whom he pleased to any post in the Administration, beginning at the top, there would be no safeguard whatever against the return of the worst abuses which existed under the régime of the ex-Khedive Ismaïl.

His Excellency had said that the proceeding was unprecedented, and indeed it was so for one obvious reason. It had never happened in the reign of the Khedive Tewfik, for, though the Prince had often changed his Ministers, he had always been wise enough to take the British Representative into his counsel. And when his Excellency spoke of the high-handed nature of Lord Cromer's proceeding, I was at a loss to understand his meaning. The Khedive had named an unacceptable Minister, and Lord Cromer, on the grounds I had mentioned, had entered a protest. At any rate, when his Excellency called to mind the express object for which he had sought the present interview, he could hardly contend that a protest was in itself a high-handed proceeding.

I am, &c.

(Signed) ROSEBERY.

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## No. 27.

*Lord Cromer to the Earl of Rosebery.—(Received January 19.)*

(Telegraphic.) *Cairo, January* 19, 1893.

IT is reported from Suakin that Osman Digna has been recalled, and a general conscription ordered at Berber, in consequence of alleged advance against the Khalifa Abdullah of a large army from the south commanded by a white man.

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## No. 28.

*Lord Cromer to the Earl of Rosebery.—(Received January 19.)*

(Telegraphic.) *Cairo, January* 19, 1893.

I HAVE communicated your message to the Khedive. His language and demeanour were satisfactory. At the same time, I am still apprehensive about the situation here.

Yesterday a very large number of natives called on Khedive. This demonstration is believed to have been partly made to order.

The ultra-Mahommedan press is very violent and mischievous.

General Walker and I both think British garrison is not sufficiently strong. I should like at once to make the announcement that the garrison will be increased.

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## No. 29.

*Sir Clare Ford to the Earl of Rosebery.—(Received January 19.)*

(Telegraphic.) *Constantinople, January* 18, 1893.

A SPECIAL communication from the Minister for Foreign Affairs, in which his Excellency expressed the great importance attached by the Porte to the news from Cairo respecting the change of Ministry, reached me this evening.

His Excellency further added the hope that the incident might be settled in a speedy and satisfactory manner.

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## No. 30.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 20, 1893.

AS regards your Lordship's proposal to increase the British garrison in Egypt, Her Majesty's Government will be prepared to do so if the necessity arises.

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## No. 31.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 22, 1893.

HER Majesty's Government desire to know if your Lordship apprehends any disturbance of public order, and if the General in command of the British troops is prepared or not, under arrangements already made, to be as usual responsible for the safety of the garrison?

Her Majesty's Government are anxious for an early reply.

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### No. 32.

*Lord Cromer to the Earl of Rosebery.—(Received January 23.)*

(Telegraphic.) *Cairo, January* 23, 1893.

THERE are indications that Riaz Pasha is endeavouring to calm excitement among Mahommedans. There is no indication of any change on the part of the Khedive.

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### No. 33.

*Lord Cromer to the Earl of Rosebery.—(Received January 23.)*

(Telegraphic.) *Cairo, January* 23, 1893.

KHEDIVE sent for Sir Elwin Palmer this morning, and told him that the reports which had been circulated to the effect that many European officials were to be dismissed were without foundation.

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### No. 34.

*The Earl of Rosebery to Lord Cromer.*

(Telegraphic.) *Foreign Office, January* 23, 1893.

HER Majesty's Government have, in view of recent occurrences, and of the opinion expressed by you and by the British General in command, determined to reinforce the British garrison in Egypt.

I have to request you to make the announcement to the Khedive and his Prime Minister.

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### No. 35.

*The Earl of Rosebery to Her Majesty's Ambassadors at Vienna, Paris, Berlin, Rome, St. Petersburgh, and Constantinople.*

(Telegraphic.) *Foreign Office, January* 23, 1893.

I HAVE to request your Excellency to inform the Government to which you are accredited that Her Majesty's Government have, in consequence of recent occurrences in Egypt, determined slightly to increase the British force there, but that this measure does not indicate any alteration of policy, or any modification of the assurances which Her Majesty's Government have from time to time given to foreign Powers on the subject of their occupation of that country.

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### No. 36.

*The Earl of Rosebery to the Marquis of Dufferin.*

My Lord, *Foreign Office, January* 25, 1893.

AT an interview with the French Ambassador to-day his Excellency handed to me the accompanying note respecting the increase of the British force in Egypt.*

After reading it I observed to M. Waddington that, without entering on any matter in his note that might be debatable, I perceived that its main purport was to press that I should state with greater precision ("préciser") the causes which had led Her Majesty's Government to take this step. I should, I remarked, have no difficulty in doing this, for the causes were simple in the extreme. In the first place, it was necessary to observe that so long as the British flag was in Egypt we were held responsible for public order. Should, then, a riot take place, we might be called to account for the losses sustained by the subjects of other Powers resident in Egypt, which would be a serious matter. It was also necessary to remember that in a time of popular excitement some insult might be offered to the British uniform or to the British flag which might compel an intervention of a very different and more formidable character: one, indeed, that might raise the Egyptian question in its most acute phase. Moreover, very recently the Egyptian Government had asked the Powers for their consent to the increase of the native army by 2,000 men, a request which had been refused. Almost simultaneously the Dervishes had invaded Egypt, and the result had been a sanguinary contest of doubtful issue between the Khedive's troops and those of the Khalifa. All these circumstances, the necessity of precaution against riot, the renewed activity of the Dervishes, and the refusal of the increase in the Egyptian army, had led Her Majesty's Government to examine more closely the number of their force—for I could not call it an army—which had been reduced to the lowest possible limit; and, prevention being commonly better than cure, they had determined, as a precautionary measure, to increase the number, which now stood at about 3,000 men, by two battalions.

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* See No. 37.

M. Waddington inquired whether we had any reason to apprehend riots.

I told his Excellency that I could offer no opinion. But there had no doubt been some effervescence observable in the populace, and in an Eastern people, liable to fanatical and other obscure influences, one could never tell how soon a smouldering spark might leap into a sudden flame.

His Excellency thanked me and said he would instantly transmit a Report of our conversation to his Government.

I am, &c.
(Signed) ROSEBERY.

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## No. 37.

### *M. Waddington to the Earl of Rosebery.—(Received January* 26.)

M. le Comte, *Ambassade de France, Londres, le* 25 *Janvier*, 1893.

L'AMBASSADEUR de Sa Majesté Britannique à Paris vient d'informer M. Develle, qu'en raison d'incidents récents, le Gouvernement de Sa Majesté a décidé d'augmenter la garnison Anglaise en Égypte. Lord Dufferin était en même temps chargé de déclarer que cette mesure n'indiquait aucune modification des assurances qui ont été données à diverses reprises par le Gouvernement de Sa Majesté au sujet de l'occupation de l'Égypte, ni aucun changement de politique.

En remerciant le Gouvernement de Sa Majesté de cette communication, le Gouvernement de la République prend acte de la déclaration que rien n'est changé dans la politique Anglaise en Égypte; et de la confirmation des assurances qui lui ont été données au sujet du caractère, de l'étendue, et de la durée de l'occupation.

En effet, au moment où il a cru devoir occuper l'Égypte, à la suite de l'insurrection d'Arabi, le Gouvernement de Sa Majesté a pris l'engagement que cette occupation ne durerait pas au delà des événements qui l'avaient provoquée. Toutes les fois que le Gouvernement de Sa Majesté a été interrogé depuis il a renouvelé expressément ces assurances et cet engagement.

Toutefois, il est à craindre que le projet du Gouvernement de Sa Majesté d'augmenter la garnison Anglaise en Égypte ne soit interprété dane un sens directement opposé à ses intentions. Aussi suis-je chargé de demander à votre Seigneurie de bien vouloir préciser les incidents qui auraient motivé cette mesure. Après la communication que Lord Dufferin vient de faire à M. Develle, le Gouvernement de Sa Majesté comprendra que si, contre notre attente, des troubles venaient à se produire en Égypte, le Gouvernement de la République se réserverait d'examiner, d'accord avec les Puissances et avec Sa Majesté le Sultan, les mesures qu'il y aurait à prendre pour sauvegarder les intérêts qui nous sont communs avec toutes les Puissances garantes de l'indépendance de l'Empire Ottoman.

Veuillez, &c.
(Signé) WADDINGTON.

(Translation.)

My Lord, *French Embassy, January* 25, 1893.

HER Britannic Majesty's Ambassador at Paris has just informed M Develle that, on account of recent incidents, Her Majesty's Government have decided to increase the English garrison in Egypt. Lord Dufferin was instructed at the same time to state that this measure did not indicate any modification of the assurances which have been given on various occasions by Her Majesty's Government on the subject of the occupation of Egypt, nor any change of policy.

In thanking Her Majesty's Government for this communication, the Government of the Republic take note of the declaration that there is no change in English policy in Egypt, and of the confirmation of the assurances which have been given to it in regard to the character, the extent, and the duration of the occupation.

In fact, at the moment when Her Majesty's Government thought it right to occupy Egypt, after the insurrection of Arabi, they undertook that that occupation should not last beyond the events which had brought it about. On every occasion when Her Majesty's Government have been interrogated since, they have expressly renewed those assurances and that undertaking.

Nevertheless, it is to be feared that the proposal of Her Majesty's Government to increase the English garrison in Egypt may be interpreted in a sense directly contrary to their intentions. I am accordingly instructed ta ask your Excellency to be good enough to specify the incidents which have made this measure necessary. After the communication which Lord Dufferin has just made to M. Develle, Her Majesty's Government will understand that if, contrary to our anticipations, troubles should arise in Egypt, the Government of the Republic would reserve to itself the right to examine conjointly with the Powers and with His Majesty the Sultan the measures to be taken to safeguard the interests which we have in common with all the Powers guaranteeing the independence of the Ottoman Empire.

Accept, &c.

(Signed) WADDINGTON.

# APPENDIX.

## No. 1.

### *Earl Granville to Sir E. Baring.*[*]

Sir, *Foreign Office, January* 4, 1884.

YOU stated in your telegram of the 22nd ultimo, that in the event of Her Majesty's Government insisting on the abandonment of the Soudan the present Ministers of the Khedive would not, in your opinion, consent to carry out such a policy.

I need hardly point out to you that in important questions, where the administration and safety of Egypt are at stake, it is indispensable that Her Majesty's Government should, as long as the provisional occupation of the country by English troops continues, be assured that the advice which, after full consideration of the views of the Egyptian Government, they may feel it their duty to tender to the Khedive, should be followed.

It should be made clear to the Egyptian Ministers and Governors of provinces that the responsibility which for the time rests on England obliges Her Majesty's Government to insist on the adoption of the policy which they recommend, and that it will be necessary that those Ministers and Governors who do not follow this course should cease to hold their offices.

Her Majesty's Government feel confident that, in the event of a change of Ministry being necessary, Egyptians will be found, either among those who have already held the rank of Minister, or in less prominent positions, who will be ready to execute the orders which the Khedive, acting on the advice of Her Majesty's Government, may give them.

In any representations which you may make with a view of carrying out the views above expressed, you may rely on the full support of Her Majesty's Government.

I am, &c.

(Signed) GRANVILLE.

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## No. 2.

### *Sir E. Baring to Earl Granville.*[†]—*(Received January* 6.)

(Telegraphic.) *Cairo, January* 6, 1884.

I HAVE communicated to Khedive and to Chérif Pasha the views of Her Majesty's Government on the Soudan question.

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## No. 3.

### *Sir E. Baring to Earl Granville.*[‡]—*(Received by telegraph, January* 8.)

My Lord, *Cairo, January* 8, 1884.

I HAVE the honour to report to your Lordship that the Khedive sent for me last night, and informed me that he had accepted the resignation of the Ministers. His Highness then said that he accepted cordially the policy of the abandonment of the whole of the Soudan, which he believed, on mature reflection, to be the best in the interests of the country. His Highness added that he had thorough confidence that any advice given by Her Majesty's Government would be in the true interest of Egypt.

His Highness sent for Riaz Pasha to charge him with the formation of a new Cabinet, but his Excellency has declined. The Khedive then sent for Nubar Pasha, who is expected to arrive in Cairo to-day.

I have, &c.

(Signed) E. BARING.

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[*] See "Egypt No. 1 (1884)," p. 174. [†] Ibid., p. 182. [‡] Ibid., p. 180.

### No. 4.

*Sir E. Baring to Earl Granville.*[*]—*(Received by telegraph, January* 8.)

My Lord, *Cairo, January* 8, 1884.

I HAVE the honour to report that Nubar Pasha has accepted office, and will form a Cabinet, which is to be composed exclusively of natives.

His Excellency entirely concurs in the wisdom of abandoning the Soudan, retaining possession of Suakin.

I have, &c.
(Signed) E. BARING.

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### No. 5.

*Earl Granville to Sir E. Baring.*[†]

Sir, *Foreign Office, January* 9, 1884.

I HAVE received your telegram of yesterday's date, informing me that Nubar Pasha has agreed to undertake the formation of a native Ministry, and that he accepts the policy of Her Majesty's Government in regard to the Soudan, although he would wish to retain Suakin.

Her Majesty's Government entirely approve your proceedings, and have received this information with much satisfaction. They are favourably disposed to the retention by Egypt of Suakin, though they are of opinion that further information and discussion will be necessary before the question of that and the other ports can be definitely decided.

I am, &c.
(Signed) GRANVILLE.

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### No. 6.

*The Egyptian Ministers to His Highness the Khedive.*[‡]

(Translation from Arabic.)

Monseigneur, *Cairo, January* 7, 1884.

YOUR Highness is aware of the circumstances which compelled the Cabinet to endeavour to protect the Upper Nile, including Khartoum. Myself and colleagues have considered it advisable that such a step was essential for the protection of Egypt and the tranquillity of its inhabitants. We had hoped to attain this object by the retrocession of the Eastern Soudan and the Red Sea shores to the Sublime Porte, if circumstances compelled us to do so, and to collect all the available forces on the Nile Valley

But Her Majesty's Government did not consider the steps we intended to take sufficient, and intimated that we should abandon the Nile Valley as far as Assouan, or Wady Halfa, so that this point should be the end of the Egyptian frontier on the south. Further, Sir E. Baring has communicated to me a telegram which he had received from Lord Granville, instructing him to inform me that, as long as the provisional occupation of the British troops continues, we must carry out the advice of Her Majesty's Government in all important matters, and any of the Ministers not acting in accordance to such advice must forfeit office.

I have had the honour to inform your Highness, during the sitting of the Council, of this communication.

We are of opinion that the tenour of this communication interferes with the independence of your Highness' Government, as well as with the responsibility of the Ministers towards your Highness, and it alters the provisions of the Rescript of the 28th August 1878.

Under these circumstances, finding ourselves unable to continue the discharge of the duties intrusted to us by your Highness, we respectfully beg to tender our resignation.

(Signed) CHÉRIF.
KHAIRY.
ALY MOUBAREK.
OMAR LOUTFI.
FAKHRY.
MOHAMED CADRY
MOHAMED ZEKY.
HAIDAR.

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[*] See "Egypt No. 1 (1884)," p. 181.
[†] See "Egypt No. 5 (1884)," p. 2.
[‡] Not previously laid before Parliament.

# EGYPT. No. 1 (1893).

FURTHER CORRESPONDENCE respecting the Affairs of Egypt.

*Presented to both Houses of Parliament by Command of Her Majesty. January 1893.*

LONDON:
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EGYPT. No. 2 (1893).

# FURTHER CORRESPONDENCE

RESPECTING THE

# AFFAIRS OF EGYPT.

[In continuation of "Egypt No. 1 (1893): C. 6849."]

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*Presented to both Houses of Parliament by Command of Her Majesty.*
*March* 1893.

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# Further Correspondence respecting the Affairs of Egypt.

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[In continuation of "Egypt No. 1 (1893)."]

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*The Earl of Rosebery to Lord Cromer.*

My Lord, *Foreign Office, February* 16, 1893.

RECENT events in Egypt render it necessary that you should be made acquainted with the views of Her Majesty's Government on the policy to be pursued in face of the altered conditions which have resulted from the sudden action of His Highness the Khedive.

His Highness, without any previous consultation with the British Representative, such as was habitual, and had been regarded as indispensable, during the reign of his lamented father, announced the dismissal of four of his Ministers, including the President, and the selection, to fill their places, of four officials, one of whom at least, and that one nominated for the highest post, had shown himself to be unfit for office by his opposition to the policy of reform introduced into Egypt during the British occupation.

It would be difficult, and it is not perhaps very material, to distinguish how far this decision was due to personal impulse alone, or to the suggestion and guidance of others; but it is evident that it was of a nature to change radically, and at a stroke, the relations which have existed between the British and Egyptian Governments during the last ten years; that it aimed a blow at the whole basis of our occupation, and indeed of our original interference. Having interfered, and interfered alone, not on our own motion, but in consequence of the refusal or abstinence of other Powers, we determined that our interference should not be barren, but that we should establish law, order, and good administration on a stable basis.

The task undertaken by Her Majesty's Government in this respect was stated in Lord Granville's Circular despatch of the 3rd January, 1883, which announced to the Porte and the Great Powers the points to which their efforts would be directed. That despatch commenced with a statement that "the position in which Her Majesty's Government are placed towards His Highness (the Khedive) imposes upon them the duty of giving advice, with the object of securing that the order of things to be established shall be of a satisfactory character, and possess the elements of stability and progress."

No objection was raised to this decision of Her Majesty's Government by the Suzerain or any of the Powers. Had Her Majesty's Government, indeed, acted otherwise, and withdrawn immediately after the battle of Tel-el-Kebir, they would have left Egypt worse than they found it, and have been responsible for bloodshed, both wanton and useless.

It was necessary then to establish the Administration on a new basis, and to guide the new Administration with authoritative advice. This was clearly laid down by Lord Granville in a despatch, dated the 4th January, 1884, in the following emphatic terms:—

"I need hardly point out to you that in important questions, where the administration and safety of Egypt are at stake, it is indispensable that Her Majesty's Government should, as long as the provisional occupation of the country by English troops continues, be assured that the advice which, after full consideration of the views of the Egyptian Government, they may feel it their duty to tender to the Khedive, should be followed.

"It should be made clear to the Egyptian Ministers and Governors of provinces that the responsibility which, for the time, rests on England, obliges Her Majesty's Government to insist on the adoption of the policy which they recommend, and that it will be necessary that those Ministers and Governors who do not follow this course should cease to hold their offices."

This declaration was acquiesced in by the Egyptian Government.

But, indeed, even had it not been so laid down, it was clear that the most ordinary common sense dictated this view of our position. Were it otherwise, our soldiers would be mere sentinels to protect a policy, possibly injurious, of which we should be no more than idle spectators, and the British flag would become the cloak for an Administration possibly not better—conceivably even worse—than that which we had intervened to supersede. It would be scarcely possible to conceive a position more futile and more absurd.

During the lifetime of the late Khedive, who had learned and suffered much, the advice of Her Majesty's Government was always at the service of His Highness. It was unobtrusive, it left to His Highness all possible initiative, it was never offered without necessity, and it was generally followed with gratitude. It is indeed obviously desirable that such intervention should be as tender to the susceptibilities of the Prince and his Ministers as possible; that it shall in fact be private guidance and not public interference. Her Majesty's Government have anxiously desired to pursue the same course with the present Ruler, and, although they have been for the moment disappointed, they have sufficient reliance on his assurances and on his political sagacity to hope that recent occurrences may not be repeated.

It was clear that the arbitrary dismissal of the Ministers without any sufficient cause, and the equally arbitrary selection of others to fill their place, leaving aside for the moment the question of the capacity and disposition of those so chosen, foreshadowed a state of things under which steady progress towards any real stability of government would be hopeless.

If the Prime Minister and the Heads of other important Departments were to be summarily dismissed in disregard of British advice, there was nothing to prevent the dismissal of any other functionaries, European or native, who might not have the good fortune to fall in with the tendencies of the moment, or whose prominence might afford a favourable opportunity for the display of autocratic power. It is not too much to say that under these circumstances the whole fabric, so laboriously built up during the last ten years, would have been at the mercy of caprice or intrigue, and would rapidly and necessarily have crumbled away.

But further, the character of the new appointments, or at least of the chief of them, could not encourage any reasonable expectation that the Ministry would willingly and unitedly work towards the maintenance and consolidation of the institutions by which it is hoped that Egypt may eventually be governed successfully without foreign assistance.

Under such a system, and with a Government so composed, there could be no security that the work of reform would progress even during the British occupation, still less that on the withdrawal of the British garrison the administration could avoid a speedy collapse into the worst abuses of former times.

From no point of view, therefore, could Her Majesty's Government sanction the Khedive's proceeding. You were instructed to protest against it with all the authority at your command, and that protest, if disregarded, would have entailed further and graver consequences. Any further action was happily avoided by the wise and timely retractation of His Highness; and Her Majesty's Government agreed with your Lordship that it was not desirable to insist upon more than was strictly necessary in a matter that must necessarily tend in some measure to diminish the Khedive's personal authority, which they are anxious to maintain, as far as they can do so consistently with other objects of not less moment.

The situation is therefore no longer one of an urgent character. But the crisis, while it lasted, was attended by certain symptoms which required special precautions at the moment, and gave some grounds of anxiety in the future.

It is clear that the position with which Her Majesty's Government had to deal differed materially from that which had existed at any previous period. Hitherto they had had on their side the Khedive, the Ruler of the State, co-operating with the British officials, and it had not, therefore, been necessary to define very closely the position of the Khedive in regard to the British occupation. The principle laid down in Lord Granville's despatch of the 4th January, 1884, that the advice which, after full consideration of the views of the Egyptian Government, Her Majesty's Government might feel it their duty to tender to the Khedive, must be followed so long as occupation of the country by English troops continued, had been accepted without cavil or dispute. There had been no occasion to take any measures to assert it, nor even to consider what those measures should be. Now, however, this principle was for the first time called in question, and was for a moment openly set aside by the present Khedive.

The attempt has been abandoned, and solemn promises have been given by His Highness that it will not be renewed. But it would not be prudent to assume too positively that all prospect of future trouble is therefore at an end.

Should further difficulties arise it might be urged that the conditions of the British occupation will have changed, and it may be asked whether altered circumstances do not require a corresponding modification of policy, whether the occupation should be maintained in opposition, as it might seem, to the sentiment of important sections of the inhabitants, and whether it would not be better that it should cease.

To this view, however, certain elementary considerations oppose themselves. Firstly, it is necessary to consider the important interests, and indeed the safety, of the large European community in Egypt. Secondly, it is by no means clear that the real feeling, even of the native population in the country, is otherwise than friendly and grateful, although it may be difficult to elicit any public or decisive expression of it. It would not be right or proper that the policy of this country, based on considerations of permanent importance, should be modified in deference to hasty personal impulse or to ephemeral agitation among certain classes. Thirdly, it seems impossible lightly, and on the first appearance of difficulties, to retire from the task which was publicly undertaken in the general interest of Europe and civilization, and to abandon the results of ten years of successful effort in that direction. And, fourthly, the withdrawal of the British troops under such circumstances would too probably result in a speedy return to the former corrupt and defective systems of administration, and be followed by a relapse into confusion which would necessitate a fresh intervention under still more difficult circumstances, though it is not now necessary to discuss the particular form which that intervention might assume.

All these considerations point to the conclusion that for the present there is but one course to pursue; that we must maintain the fabric of administration which has been constructed under our guidance, and must continue the process of construction, without impatience, but without interruption, of an administrative and judicial system, which shall afford a reliable guarantee for the future welfare of Egypt.

Circumstances might, indeed, occur of the nature I have indicated which might render it necessary to consider the expediency of fresh consultations with the Suzerain and with the European Powers.

It would serve no useful purpose to discuss at this moment the proposals which it might, in that case, be desirable to bring forward, nor need we attempt to forecast the result. But this at least may be laid down with absolute certainty: that Egypt would in no case be released from European control, which might possibly be asserted in a much more stringent and irksome form than at present. The contingency is not immediate, but we are forced to a clearer contemplation of it by recent occurrences. On the other hand, it is impossible not to see how seriously those occurrences impair the security for order, justice, and good government which Her Majesty's Government have always declared, and which the Sultan and the European Powers have equally admitted to be a necessary preliminary to the withdrawal of the British troops from Egypt.

I am, &c.
(Signed) ROSEBERY.

# EGYPT. No. 2 (1893).

FURTHER CORRESPONDENCE respecting the Affairs of Egypt.

[In continuation of "Egypt No. 1 (1893): C. 6849."]

*Presented to both Houses of Parliament by Command of Her Majesty. March* 1893.

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EGYPT. No. 3 (1893).

# REPORT

ON THE

# FINANCES, ADMINISTRATION, AND CONDITION OF EGYPT,

AND THE

# PROGRESS OF REFORMS.

[In continuation of "Egypt No. 3 (1892): C. 6589."]

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# Report on the Finances, Administration, and Condition of Egypt, and the Progress of Reforms.

[In continuation of "Egypt No. 3 (1892)."]

*Lord Cromer to the Earl of Rosebery.—(Received March 20.)*

My Lord, *Cairo, March 9, 1893.*

I HAVE the honour to submit to your Lordship my Annual Report on the progress made in the various Administrative Departments of the Egyptian Government during the year 1892.

### 1.—*Finance.*

The Estimates for the year 1892 were originally as follows:—

| | £ E. |
|---|---|
| Revenue | 9,950,000 |
| Expenditure | 9,400,000 |
| Surplus | 550,000 |

Very shortly after the Estimates were framed some important fiscal changes were made.

In the first place, the salt tax was reduced by 40 per cent., at an estimated loss to the Treasury of £ E. 80,000.*

In the second place, the professional tax was abolished, at a gross loss to the Treasury of £ E. 60,000 a-year.

Large reductions were also made in the railway tariff.

Assuming that in this latter case the loss would be made good by increased traffic, and allowing for a loss of revenue of £ E. 140,000 under the heads of salt and professional tax, the revised estimate stood as follows:—

| | £ E. |
|---|---|
| Revenue | 9,810,000 |
| Expenditure | 9,400,000 |
| Surplus | 410,000 |

The actuals show the following result:—

| | £ E. |
|---|---|
| Revenue | 10,364,000 |
| Expenditure | 9,595,000 |
| Surplus | 769,000 |

In spite, therefore, of the large reductions of taxation made early in the year, the revenue exceeded the original estimate by no less than £ E. 414,000. The excess over the revised estimate was £ E. 554,000.

The surplus was £ E. 219,000 in excess of the original, and £ E. 358,000 in excess of the revised estimate.

The expenditure was £ E. 195,000 greater than the estimate. This excess is due to the following causes:—

In the first place, at the time the Estimates were framed it was hoped that the expenditure of £ E. 150,000 necessary to complete the abolition of the corvée would be met from the economies resulting from the recent conversion of the Egyptian debt. This arrangement, however, involved the unanimous assent of the Powers, and as that assent was not obtained, the expenditure had to be met from the ordinary revenue.

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* Assuming that no increase of consumption could have occurred by reason of the reduction of the tax, the loss would have been £ E. 100,000. A recovery of £ E. 20,000 in the revenue was, however, allowed for increased consumption.

In the second place, the railway revenue largely exceeded the estimate. This naturally involved a corresponding increase in the working expenses. £ E. 100,000 of the excess of the expenditure over the Estimates is dueto this cause.

On the other hand, provision was made in the Estimates for an expenditure of £ E. 50,000 on the drainage of Cairo.

The drainage works have not been commenced, as the preliminary surveys are not yet finished. The result is that only £ E. 4,000 out of the £ E. 50,000, for which provision was made, was actually spent during the year 1892, thus leaving an economy of £ E. 46,000 under this head as compared with the Estimates.

The expenditure account may, therefore, be stated as follows:—

| | £ E. | £ E. |
|---|---|---|
| Original estimate | | 9,400,000 |
| Add— | | |
| Corvée expenditure | 150,000 | |
| Excess railway expenditure | 100,000 | |
| | | 250,000 |
| Total | | 9,650,000 |
| Deduct economy on Cairo drainage | | 46,000 |
| | | 9,604,000 |

The actual expenditure (£ E. 9,595,000) differed, therefore, only by £ E. 9,000 from the figure given above. This sum of £ F. 9,000 represents the net result of a number of minor differences between the Estimates and the actuals.

I need not dwell at any length on the Budget for 1893. It will be sufficient for me to say that the only fiscal change which has been effected is that the land tax in one of the provinces of Egypt, where the assessments were notoriously too high, has been reduced by £ E. 110,000.

After allowing for this reduction, the estimate stands as follows:—

| | £ E. |
|---|---|
| Revenue | 10,010,000 |
| Expenditure | 9,550,000 |
| Surplus | 460,000 |

Of this surplus, £ E. 344,000 is due to the economies resulting from the conversion of the Debt, and cannot, therefore, be employed without the assent of the Powers. £ E. 106,000 has to be paid to the General Reserve Fund in the hands of the Commissioners of the Debt, thus leaving a balance of only £ E. 10,000 at the disposal of the Egyptian Government. The surplus which is, therefore, really available is small. But the Estimates of revenue and expenditure have been framed with caution, and I do not think that the Financial Department of the Egyptian Government has taken an over-sanguine view of the future in allowing the reduction of the land tax to which I have alluded above.

There is one further very notable feature in the Egyptian financial situation to which it is necessary that I should allude.

The General Reserve Fund, which, under the international obligations taken by the Egyptian Government, has to be paid into the hands of the Commissioners of the Debt, amounted on the 31st December, 1891, to £ E. 1,736,000. On the 31st December, 1892, this fund closed with a credit of £ E. 1,958,000.

Similarly, the Special Reserve Fund, which is at the disposal of the Egyptian Government, has risen during the year 1892 from £ E. 672,000 to £ E. 770,000.

The accumulated economies resulting from the conversion of the debt, which at the end of 1891 amounted to £ E. 325,000, have now risen to £ E. 656,000.

The accumulated economies of the last few years under all these three heads amount, therefore, to no less than £ E. 3,391,000 namely:—

| | £ E. |
|---|---|
| General Reserve Fund | 1,958,000 |
| Special Reserve Fund | 777,000 |
| Conversion economies | 656,000 |
| Total | 3,391,000 |

I shall presently revert to the question of the employment of these large sums of money.

It may be interesting if I give a brief general review of the financial results for the last three years. They are as follows:—

| | Surplus. |
|---|---|
| | £ E. |
| 1890 | 599,000 |
| 1891 | 1,074,000 |
| 1892 | 769,000 |
| Total | 2,422,000 |

The average surplus for the last three years has thus been £ E. 814,000.

During the same period the following large reductions of direct taxation have been effected:—

| | £ E. |
|---|---|
| Professional tax | 180,000 |
| Land tax (including the reduction of £ E. 110,000 to which allusion is made above) | 330,000 |
| Sheep and goat tax | 40,000 |
| Weights and measures tax | 28,000 |
| Sundry small taxes | 14,000 |
| Total | 592,000 |

In addition to these large reductions in direct taxation, the following very important reforms have been effected:—

1. Arrears of land tax to the extent of £ E. 903,000 have been remitted.
2. The salt tax has been reduced by 40 per cent.
3. The postal and telegraph rates have been reduced by 50 per cent.
4. The railway tariff has been very largely reduced.
5. Expenditure to the extent of £ E. 150,000 a-year has been incurred in order to abolish the corvée. This is in addition to an annual charge of £ E. 250,000 which was assumed by the Egyptian Government previous to 1890.*

During this same triennial period the only tax which has been increased has been the duty on tobacco, which has been raised from P. T. 14 to P. T. 20 the kilog. Owing, however, to the facts, first, that the price of tobacco in Turkey has fallen, and, secondly, that the profits of the middlemen have been curtailed, the price to the consumer has not been raised to an extent nearly proportionate to the increase in the duty.

The facts which I have thus briefly stated above give rise to the following questions:—

In the first place, is the present prosperous condition of the Egyptian finances due to exceptional circumstances, or, on the other hand, may the very remarkable figures which I have given above be regarded as indicative of the normal condition of Egyptian finance?

In the second place, what is the justification for the very large cash balances which, in one form or another, now belong to the Egyptian Government?

I will endeavour to answer these two questions to the best of my ability.

The answer to the first question depends, in the first place, on the growth and elasticity of the revenue, and, in the second place, on an effective control being exercised over the expenditure.

The principal resource of the Egyptian Treasury is the land revenue, which is estimated to yield £ E. 4,832,000 during the current year. In a few places the assessment is still somewhat too high, and it is to be hoped that, in course of time, it may be possible to relieve whatever hardship arises on this account. At the same time, in view of the great improvements in the system of irrigation, and of the large reductions, amounting to £ E. 330,000 a-year, which have recently been effected in the land tax, there can, I think, be little doubt that the collection of the tax in future years up to about the amount given in the Estimates of the current year can be effected without hardship to the mass of the cultivators.

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* In order to avoid any misapprehension, I wish again to explain that when I speak of the abolition of the corvée I mean the substitution of free for forced labour in the annual work of cleaning out the canals. It was this which in former days weighed most hardly on the people. Forced labour still exists in order to prevent inundations when the Nile is exceptionally high, as was the case last year. This is not nearly so great a hardship as the corvée, to which I have alluded above; at the same time, its existence is to be regretted. Its total abolition appears, for the present at all events, to be impossible, but the Public Works Department is preparing a plan under which it is hoped that the evil will be minimized.

The following Table shows the revenue during the past three years of those Departments of the Government which are more especially indicative of the growing prosperity of the country:—

| | 1890. | 1891. | 1892. |
|---|---|---|---|
| | £ | £ | £ |
| Railways | 1,408,000 | 1,631,000 | 1,680,000 |
| Telegraphs | 35,000 | 34,000 | 40,000 |
| Customs (exclusive of tobacco) | 651,000 | 808,000 | 815,000 |
| Port of Alexandria | 115,000 | 127,000 | 136,000 |
| Post Office | 106,000 | 112,000 | 119,000 |

When it is remembered that, during the last three years, very large reductions were made in the railway tariff and in the postal and telegraph rates, it is at once clear that these figures show a very satisfactory result. They denote a remarkable degree of elasticity in the revenue.

An examination of the expenditure side of the Government accounts shows that the administrative expenditure of the Government has undergone little variation during the last three years. Although many reforms involving extra credits have been carried out, such extra credits have, for the most part, been met by economies in other chapters of the Budget. Thus, the administrative expenditure exceeded the amounts authorized by the London Convention in—

| | £ |
|---|---|
| 1890 by | 115,000 |
| 1891 by | 141,000 |
| 1892 by | 136,000 |

This extra expenditure was met out of the share accruing to the Government from the annual surplus of the revenue over the expenditure.

I think, therefore, I am justified in saying that, on the one hand, the revenue shows satisfactory signs of elasticity, and that, on the other hand, the expenditure is under effective control.

Can, however, this state of things be regarded as normal? Up to the present time I have hesitated to express any very confident opinion as to the future of Egyptian finance, as I thought that the wave of prosperity, which for the last few years has been passing over Egypt, might be due to exceptional and ephemeral circumstances. When, however, I look to the figures which I have given above; when I note that, in spite of large reductions of taxation, the average Egyptian surplus for the last three years has been £ E. 814,000; when I bear in mind that these results have been obtained during a period when the prices of agricultural produce were very low; when I remember that a very low Nile occurred in 1888, and that exceptionally high Niles occurred in 1887 and in 1892 without seriously affecting the financial condition of the country; when I further remember that the agricultural prosperity of Egypt depends in a slight degree, as compared with that of other countries, on the accidents of the seasons, but rather mainly on the waters of the Nile, which are now brought under much more effective control than at any former period of Egyptian history; when I remember all these points, I do not think that I am taking an over-sanguine view in stating that, in spite of some disturbing causes, such, for instance, as the possible reappearance of the cotton-worm,* and the damage which may be caused by locusts,† the present condition of Egyptian finance may, under prudent management, be considered as normal, and that it need not be attributed to exceptional causes which are beyond human control.

I turn now to the second of the two questions which I have propounded above, that is to say, I propose to make some remarks upon the large cash balance, amounting in all to £ E. 3,391,000, which, in one form or another, belongs to the Egyptian Government.

The most important item which goes to make up this sum of £ E. 3,391,000 is the £ E. 1,958,000 constituting the General Reserve Fund in the hands of the Commissioners of the Debt.

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* The cotton-worm has not done any serious harm in Egypt during the last three years. Some good authorities are inclined to think that its disappearance is due to the improvements effected in the drainage system of the country.

† After the experience gained in 1891, it seems probable that the authorities here will be able to deal effectually with locusts should they reappear.

This Reserve Fund was instituted under a Khedivial Decree of the 21st July, 1888, to which the assent of the Powers was obtained. This Decree provided that the Reserve Fund was to be allowed to accumulate until it reached the sum of £ E. 2,000,000. Any excess over this sum was to be applied to sinking fund. Article 3 of the Decree left a discretionary power to the Egyptian Government to apply the money belonging to the Reserve Fund "à des dépenses extraordinaires engagées conformément à l'avis préalable de la Commission de la Dette." Advantage has been taken of this provision to apply £ E. 471,000 to the extension of the railway system, £ E. 180,000 to the purchase of new steamers for the Khedivial mail-packet service, and £ E.106,000 to the commutation of pensions, making a total of £ E. 756,000. All these sums will be eventually repaid to the Reserve Fund.

I venture to think that the Commissioners of the Debt have exercised a very wise discretion in advancing these sums to the Egyptian Government. For the moment the gradual and prudent development of the country by means of public works is of far greater benefit both to the Egyptian people and to their creditors than the application of any sums to sinking fund, which must necessarily be very small in amount as compared to the total capital of the debt. Indeed, I should be glad to see the system carried still further, for I cannot but think that the amount of the General Reserve Fund which remained unpledged on the 31st December, 1892, viz., £ E. 1,202,000, is unnecessarily large. The money is, of course, not wholly unproductive. It is invested in Egyptian stocks. I cannot help thinking, however, that it would be more sound finance if a still larger portion of the fund were devoted to a further extension of the railway system or to other works of public utility.

I turn to the Special Reserve Fund, which is at the disposal of the Egyptian Government. This, as I have already mentioned, amounted, on the 31st December, 1892, to £ E. 777,000. The Egyptian Government requires a cash balance of at least £ E. 500,000 to carry on the work of the country. Indeed, even with a cash balance of that amount, the Treasury is at certain periods in the year obliged to contract short loans. At the same time, the sum of £ E. 777,000 may be considered as somewhat excessive. The Government has, therefore, very wisely decided to apply £ E. 200,000 from the Special Reserve Fund to the purchase of land belonging to the Domains Administration. This land will be given to pensioners in exchange for their rights to pension. About £ E. 50,000 will also be applied to the commutation of pensions by payments in cash. These operations are, from every point of view, very sound. They will diminish the annual charge for non-effective services, which is very heavy, and, at the same time, they will place in circulation a portion of the large estates which have unfortunately accumulated in the hands of the Government.

There remains to be considered the sum of £ E. 656,000, being the accumulated economies resulting from the conversion of the debt. This fund stands on a wholly different footing from those with which I have so far treated. Various proposals have been made to utilize this money. It was at one time suggested that it should be used to abolish the corvée, and, at another time, to reduce the land tax. The progressive improvement in Egyptian finance has fortunately enabled both these most beneficial reforms to be carried out without trenching on the conversion economies, but the difficulty of carrying one of them into execution was greatly enhanced, whilst the other was delayed owing to the impossibility of obtaining the unanimous assent of the Powers to either proposal. Again, the proposal to employ a portion of the economies to the reduction of the light and port dues, which would have afforded great benefit and relief to commerce, fell through for a similar reason. So also did a proposal to apply £ E. 60,000 a-year of the economies to an increase of the Egyptian army, which is much required. Another suggestion has often been made, but has never yet been laid before the Powers. It is to devote some £ E. 30,000 a-year of the economies to educational purposes. The more intelligent natives of this country feel strongly on this subject. They wish to see the educational grant increased. I fully sympathize with them, but, owing to the very numerous calls on the Egyptian Treasury for money to effect reforms in the various Departments of the Government, it is impossible to comply at once with this very reasonable request unless a portion of the economies resulting from the conversion of the debt be utilized.

It is, however, useless to discuss this question on its own merits. There is obviously no financial justification for locking up this large sum of money. It is true that the money is invested at a low rate of interest, but it is, on the other hand, certain that it might be used to much greater advantage than at present. The objections of those Powers who have declined to accept the various proposals made for the utilization of this fund are notoriously not financial, but political. Under these circumstances there appears for the present to be no alternative but to allow the money to accumulate in the hands of the Commissioners of the Debt at the rate of £ E. 344,000 a-year, in addition to the interest on the savings of former years.

To turn to another subject; debt to the extent of £171,000 was paid off during the year 1892. The present outstanding nominal capital of the Egyptian debt is shown in the following Table:—

| | £ E. |
|---|---|
| Guaranteed Loan, 3 per cent. .. .. .. .. .. | 8,937,000 |
| Preference Loan, 3½ per cent. .. .. .. .. .. | 29,400,000 |
| Unified Loan, 4 per cent. .. .. .. .. .. | 55,987,000 |
| Domains Loan, 5 per cent .. .. .. .. .. | 4,826,000 |
| Daïra Loan, 4 per cent. .. .. .. .. .. .. | 7,223,000 |
| Total .. .. .. .. .. | 106,373,000 |

The charge on account of tribute (£ E. 665,000) and debt for 1893 is £4,669,000.* This represents about 46 per cent. of the Egyptian revenue.

I may mention, as a fact of some interest, that when the Law of Liquidation was framed in 1880, the charge for debt and tribute amounted to 66 per cent. of the revenue. The proportion has thus improved by about 20 per cent. since those days, in spite of the fact that, on the one hand, fresh debt had to be incurred as a consequence of the Arabi revolt, and, on the other hand, that large reductions of taxation have taken place.

The charge, which is for the most part the heritage of past misgovernment, is, however, still heavy, and it is much to be regretted that the Egyptian taxpayers should have to bear it. Nevertheless, it is a charge which, with moderately good government, the country can bear, and under which the people may prosper, and, in fact, do prosper.

The present condition of Egyptian finance, whether it be regarded from the point of view of the taxpayer or of the creditor, is, therefore, distinctly favourable; and to the remarks which I have already made on this subject I may now add that, should the engineering skill which has already done so much for Egypt be applied, as I hope that before very long it will be applied, to further large improvements in the irrigation system, and should no untoward political circumstances occur of a nature to arrest the present rate of progress, I see no reason why the people of this country should not attain to a degree of material prosperity far greater than they now enjoy, and very far greater than they ever have enjoyed from the most remote periods of their ancient history.

In spite of the artificial difficulties which frequently arise in connection with the complicated administrative system of Egypt, it only requires the application of the most elementary principles of good government to insure to the Egyptian people the full benefit of all those advantages which Nature has so bountifully bestowed on the country.

### 2.—*The Salt Department.*

The gross receipts of the Salt Department for 1892 were originally estimated at £ E. 233,000. In January 1892 the price of salt was reduced by 40 per cent. The actual receipts in 1892 were £ E. 179,000. Thus, although the tax was reduced by 40 per cent., the loss of revenue was only 23 per cent. as compared to the original estimate. The balance was recouped by increased consumption; 39,000 tons of salt were sold in 1892, as compared to 30,380 tons in 1891. This result is all the more satisfactory, inasmuch as no pressure of any sort has been exercised to induce the public to buy salt. In former times very great pressure was exerted in this direction. The people were obliged to buy salt whether they wished to do so or not. From the days of the Dual Control, frequent efforts have been made to put a stop to this abuse; nevertheless, it still existed, although in a limited degree. I think I may now say with confidence that the salt revenue can no longer be considered as being derived from a tax, but rather as the profits of a commercial undertaking of which the Government has a monopoly.

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* This includes interest on the Guaranteed, Preference, and Unified stocks, in all £ E. 3,494,000, interest on the Suez Canal shares (£ E. 194,000), and on the Daïra Khassa Loan (£ E. 34,000), the Moukabala Annuity (£ E. 150,000), the estimated deficit on the Domains Loan (£ E. 130,000), and some minor incidental charges amounting to £ E. 2,000. The Daïra estates yield a surplus, and do not therefore constitute a charge on the Egyptian Treasury.

I am glad to be able to add that Mr. Hooker, the Head of the Salt Department, speaks highly of his native subordinates. He informs me that there have been very few cases of corruption amongst the employés of the Department.

### 3.—*Domains Administration.*

When the Domains Loan was first contracted, some fourteen years ago, the amount for which the estates were hypothecated was considerably in excess of their real selling value. The natural result was that it was found impossible to effect sales at the prices entered in the official catalogue issued by the Commissioners of the Domains. In order to bring the lands more within the reach of the public, it was recently agreed between the Egyptian Government, Messrs. Rothschild, and the Commissioners of the Domains that a new valuation should be made, based upon the outstanding capital of the loan after deducting from it certain resources, amounting to about £ E. 540,000, which will not affect the ultimate liquidation of the Domains. This has enabled an average reduction of 19 per cent. to be made in the selling values of the land. Since this revaluation was made offers have been received for the purchase of 19,394 acres of land, valued at about £ E. 359,000. The fact that these offers have been made shows that there is a good deal of accumulated wealth in the country.

The Commissioners are now engaged in dividing up the lands into small plots, in order to give still greater facilities for the ultimate liquidation of the Domains. During the year 1892, 4,649 acres of land were sold for £ E. 30,414. In consequence of the continued sales of land it has been found possible to make considerable reductions in the staff of the central office.

In February 1878, before the formation of the Domains Administration, the Princess Tewfida Hanem raised a loan of £220,000 on 10,428 acres, which formed part of the lands subsequently mortgaged to the Domains Loan. The debt had to be taken over by the Commissioners at a yearly charge to the Budget of about £ E. 21,000. It was finally liquidated last October. Future Budgets will, therefore, be relieved of this charge, and the Domains deficit will in consequence be reduced. The deficit for the year ending the 31st March, 1893, is estimated at £ E. 110,000.

The following figures give the yield per acre of the principal crops cultivated on the land farmed directly by the Administration, and a comparison with the yield of 1891:—

| | | 1891. | 1892. | 1892. |
|---|---|---|---|---|
| Cotton | Rotals | 418 | 530 | + 112 |
| Cotton seed | Ardebs | 3 | 3·16 | + 0·16 |
| Wheat | ” | 4·19 | 3·16 | — 1·3 |
| Beans | ” | 2·9 | 3·8 | + 0·23 |
| Barley | ” | 3·12 | 3·17½ | + 0·5½ |

In my Report last year I mentioned that since the formation of the Administration the land had never given so large a yield of cotton as it had done in 1891. Yet, as will be seen above, the yield of 1892 has surpassed that of 1891 by 112 rotals. Prices for cotton still ruled very low; a rise in the market occurred, but it was too late, the greater portion of the crop having been already sold.

The Domains estates now consist of 293,091 acres of land, some of which, however, is waste. Of these, 190,050 acres were in 1892 let at a rental of £ E. 199,550, of which amount only £ E. 848, or about ½ per cent., now remains to be paid. The Budget for 1893 shows an increase of 2,600 acres in the area leased, and a higher rental of £ E. 11,250.

Negotiations are about to be commenced with a view to converting the Domains Loan from a 5 per cent. to a 4¼ per cent. stock. This latter rate of interest has been very wisely adopted so as to avoid the necessity of increasing the outstanding capital of the loan.

### 4.—*Daïra Administration.*

This Administration, which was for so many years a burden to the Treasury, has become a source of considerable profit.

In my last Report I anticipated that the accounts of 1891 would show a surplus of £ E. 20,000, but the final accounts for that year showed a surplus of £ E. 46,254.

The provisional accounts of 1892 will show a surplus of £ E. 102,000, and this notwithstanding an exceptional expenditure of fully £ E. 20,000 for the enlargement and improvement of the sugar factories, rendered necessary to keep pace with the continuous increase in the production of sugar-cane.

The Budget for 1893, approved last December by the Superior Council of the Daïra Sanieh, anticipates a surplus of £ E. 136,000, but I am informed that the Council of Direction is already in a position to say that this anticipated surplus will be largely exceeded, and that the actual surplus will be fully £ E. 180,000.

These surpluses are applied to the reduction of debt, and are exclusive of £ E. 50,000 paid annually since 1891 to the Commissioners of the Debt as the economy in interest resulting from the conversion of the debt of the Daïra Sanieh in 1890.

The crop of sugar-cane planted in 1892, and now being crushed, is the largest on record, and it is expected that 700,000 tons of cleaned canes will be delivered to the factories. This is 70,000 tons more than the crop of the preceding year, and 279,000 tons in excess of the average crop during the past decade from 1881 to 1890, both inclusive.

The average price obtained for No. 1 sugar in 1892 was P. T. 61¼ per cantar, while the average price for the decade from 1881 to 1890, inclusive, was P. T. 76¼ per cantar. It is therefore satisfactory that the profits realized by the Administration are obtained in spite of very low prices for sugar.

The prosperity of the Daïra Sanieh is the reflex of the agricultural prosperity of Upper Egypt.

Since the low Nile of 1888 Upper Egypt has been favoured with a sufficient supply of water, and the crops have suffered little from the adverse atmospheric influences which seriously affected them in 1887 and 1888. In consequence, the winter and summer crops have been abundant and good.

The effect has been felt by the Daïra Sanieh in the greater regularity shown by its tenants in the payment of their rents. Thus, while the average of arrears of rent at the definitive close of the accounts for the years from 1881 to 1890 were £ E. 46,000, or 12¼ per cent. of the total rentals, the arrears at the close of 1891 only amounted to £ E. 24,000, and for 1892 they will not exceed £ E. 20,000, or less than 5 per cent. of the total rentals.

Of the cultivated lands of the Daïra Sanieh, barely 4 per cent. are cultivated by the Administration; 96 per cent. are rented for terms varying from three to six years, and although in the majority of cases the security offered by the lessees is very slender, the collection of rents shown above proves that the system is fairly successful. The mass of the tenants, numbering over 3,000, have no fortune, and their capital is limited to the cattle with which they plough.

It may safely be assumed from the collection of rents that 95 per cent. of the tenants of the Daïra Sanieh made, in 1891 and 1892, the two ends meet, and that a large number of them realized a good profit there is proof in the fact that the number of applicants to rent land is steadily increasing. This is especially the case in regard to lands for the culture of sugar-cane, the rentals of which show a yearly advance. The land, I may observe, is let on leases of three years. In 1890 the average rent obtained was P. T. 290 an acre; in 1891, P. T. 309¾; in 1892, P. T. 329; and in 1893, P. T. 340.

Equally steady has been the increase in the average yield of sugar-cane per acre. In 1890 it was 339 cantars; in 1891, 401 cantars; and in 1892, 408 cantars. There is in this conclusive evidence that the lands are not diminishing in fertility, and that the tenants are gradually but surely improving in their culture.

To these evidences of the present prosperous condition of the tenants, and of the greater care they are giving to the cultivation of their crops, I would add that a spirit of enterprise is showing itself, little known in the past, and which is probably stimulated by the freedom which they now enjoy from many vexatious exactions to which all cultivators were subjected in former times.

The work of the factories of the Daïra Sanieh in 1892 was especially satisfactory. Aided by the exceptional richness of the crop, and by improved appliances, the extract of all sugars reached 10·73 per cent., as against 10·40 per cent. in 1891.

### 5.—*Trade and Customs.*

The Customs revenue in 1892, exclusive of tobacco, amounted to £ E. 815,000, as against £ E. 809,000 in 1891, thus showing an increase of £ E. 6,000.

I mentioned in my previous Reports that there had been a large growth in the import trade during 1890 and 1891. Thus, the value of the imports in 1890 was £ E. 857,000 in excess of that of 1889, and again, the value of the imports in 1891 was £ E. 1,131,000 in excess of that of 1890. It was scarcely to be expected that this rate of increase should continue. The value of the goods imported in 1892 was about similar to that of 1891, being £ E. 8,641,000 in the former and £ E. 8,650,000 in the latter year. There was a decrease of about £ E. 415,000 in textile fabrics due to the large stocks imported in 1890 and 1891 not having been exhausted. The imports of refined sugar also decreased to the extent of about £ E. 25,000, owing to the more extended consumption of the home-manufactured article in the place of imported sugar. These decreases were, however, made good by increases in coal (£ E. 144,000), indigo (£ E. 76,000), live stock (£ E. 60,000), metals and machinery (£ E. 55,000), wheat and other cereals (£ E. 96,000), fruits (£ E. 27,000), and rice (£ E. 21,000).

The value of the goods exported was £ E. 13,334,000 in 1892 against £ E. 13,872,000 in 1891, a decrease of £ E. 538,000. The decrease occurred wholly in cereals (wheat, maize, barley, lentils, and beans), which show a diminution in value of £ E. 937,000 as compared to 1891. There is also a decrease of £ E. 151,000 in cotton, but this is merely a diminution of value due to comparatively low prices, and also to the fact that a considerable portion of the large crop of 1892 was not exported until after the commencement of 1893, and will, therefore, figure in the Returns of the current year. The quantity of cotton exported in 1892 was 4,569,000 cantars, as against 3,831,000 cantars in 1891, an increase of 738,000 cantars.

The decrease in cereals was to a great extent made good by the increase in cotton-seed (£ E. 379,000), onions (£ E. 27,000), and sugar (£ E. 132,000), in all £ E. 537,000.

In looking over the Custom-house statistics I observe that specie to the extent of £ E. 18,467,000 has been imported into Egypt, and that £ E. 15,135,000 has been exported from the country, during the last seven years. The excess of imports over exports during this period has, therefore, been £ E. 3,332,000. It is more especially during the last three years that the balance of trade between Egypt and Europe has been regulated by large amounts of specie importations.

Again, I am informed that the exportation of gold and silver ingots produced from old gold and silver jewellery, which is commonly sold by the natives of the country when they are in want of money, fell from £ E. 281,000 in 1889 to £ E. 27,000 in 1891, and again to £ E. 10,000 in 1892.

Both these facts are very significant. They are strongly indicative of the growing prosperity of the country.

### 6.—*Post Office.*

The following Table shows the revenue and expenditure of the Post Office for the last four years:—

| | 1889. | 1890. | 1891. | 1892. |
|---|---|---|---|---|
| | £ E. | £ E. | £ E. | £ E. |
| Revenue .. .. .. | 116,000 | 106,000 | 112,000 | 119,000 |
| Expenditure .. .. | 86,000 | 89,000 | 89,000 | 93,000 |
| Net revenue .. .. | 30,000 | 17,000 | 23,000 | 26,000 |

It will be seen that the gross revenue of the Post Office was greater in 1892 than in 1889. This result is very satisfactory, for in 1890 a very large reduction, amounting to 50 per cent., was made in the rate of inland postage, and further minor reductions were made in 1891.

In 1892 the postage on local letters, that is to say, letters addressed to the town in which they are posted, was reduced from 5 millièmes (1¼*d.*) to 3 millièmes (¾*d.*); the soldiers of the Egyptian army serving on the frontier or at Suakin were accorded the privilege of sending or receiving letters for 3 millièmes, and, in the foreign service the postage for countries not included in the Postal Union was reduced from 3 piastres (7½*d.*) to 2 piastres (5*d.*).

On the 1st July some useful measures, which were arranged at the Vienna Postal Congress of 1891, came into operation. Amongst the principal innovations was the faculty given to insure articles sent through the post against all risks. Egypt has been able, by a new arrangement with the Insurance Companies, to benefit by this faculty without any increase in the cost. The same insurance fee now covers cases of *force majeure* which were formerly exempted. To this Congress also are due the special service for the transmission of jewellery, and the arrangement by which customs dues payable on parcels on delivery may remain at the charge of the senders.

## 7.—*Irrigation.*

The year 1892 will be remembered as one in which the Nile, after falling in the summer months to an exceedingly low level, rose in the late autumn to an abnormal height.

With the exception of the years 1889 and 1890, there have been no years since the famine year of 1878 in which the river reached as low a level at Assouan as it did in the summer of 1892. In 1889 and 1890 the discharge of the river during the months of June and July fell as low as it did during the year just past, but in those two years the flood gave no trouble. In 1892, however, no sooner was the Public Works Department out of its irrigation difficulties, than it had to face the strain of an exceptionally high and prolonged flood.

In spite of the difficulties of supply the cotton crop of 1892 was the largest on record; full details are yet wanting, but I understand that it has reached 5,000,000 cantars. The rice crop was also an exceedingly good one.

In Upper Egypt the outturn of the sugar-cane crop reached the highest figures yet recorded. The Daïra Sanieh officials estimate it at 10 per cent. over that of 1891, which was the largest crop that Egypt had hitherto produced.

The success obtained in thus saving the crops was in Upper Egypt due to a judicious application of what is known as the "rotation" system, whereby every one obtains his water in turn. In Lower Egypt this system was applied with equal success, but all the efforts of the Department would have been unavailing to save the whole crop had it not been for the splendid results obtained in the regulation of the Barrage.

Throughout the months of May, June, and July the difference in level between the water up stream and down stream of this work was from 3½ to 3¾ metres, that is, from 11 ft. 6 in. to 12 ft. in., and the river below was practically dry.

The flood was an exceptionally late and high one. There has been only one flood in the last eighteen years which has surpassed it in importance, viz., that of 1878, in which year the damage done to life and property was very great.

In comparing the four high floods of 1874, 1878, 1887, and 1892, it is to be observed that the river at Cairo remained above the dangerous height of 24 cubits registered on the Roda kilometre for—

| | Days. |
|---|---|
| In 1874 | 47 |
| 1878 | 39 |
| 1887 | 33 |
| 1892 | 43 |

But the danger from a flood depends more upon the dates at which it attains its maximum than on the duration of the flood, for unless the fall has commenced before the "sarf," or emptying of the basins, begins, some 250,000,000 cubic metres of water per day are added to the already overcharged river, and the danger and strain on the river banks are greatly prolonged.

It is for this reason that the floods of 1878 and 1892, which were late, were more dangerous than those of 1874 and 1887, which were early.

The Nile banks had been greatly strengthened since the flood of 1887, and the benefits of these works were fully felt in 1892. Had the last flood found the Irrigation Department as unprepared as it was in 1887, a catastrophe would almost certainly have ensued.

Thanks, however, to the experience gained in 1887, and to the additional works since carried out, it became possible to deal successfully with the flood of 1892.

The strain on the whole of the Public Works Department was none the less severe, and for two months every available engineer, European and native, was engaged in patrolling the banks. Thanks to their energy, to the hearty aid rendered by all the village Headmen, who worked with great good-will, and, above all, to the excellent arrangements made for controlling the flood by the Inspectors-General of Irrigation in Lower and Upper Egypt, the flood passed away with hardly any damage to the country beyond a few local basin banks bursting in Upper Egypt, and the damage done to crops from infiltration in Lower Egypt.

One noticeable fact was the cordial way in which, with hardly any exception, the Mudirs and their staffs and the village Headmen worked with the Irrigation officials, and placed all their resources at their disposal.

Of the new works, I will first take the repairs to the Barrage as being the most important. In 1891 springs had been discovered beyond the down-stream edge of the floor. It was satisfactorily proved by experiment that these springs were caused by water passing below the foundations of the work from the up-stream to the down-stream side of the floor. The quantity of water in these springs was not great, but unless they had been checked they would doubtless have increased, and in time have endangered the stability of the structure.

In 1892 a layer of stiff puddle was laid in a trench which had been dredged in the river-bed up-stream of the floor. Some of the puddle, it was hoped, would be sucked in by the water, and help to staunch the holes themselves through which the springs were finding their way.

The results of this experiment have been so satisfactory that the work will be continued on the same lines in 1893, and it is hoped that the passage of water under the floor will in time be entirely stopped.

The total cost of these repairs in 1892 amounted to £ E. 5,000.

In Upper Egypt a large number of masonry works were carried out.

The most important work was the Abutig escape regulator of fifteen arches. It has been constructed for the purpose of regulating the escape of the basin water into the river instead of, as formerly, merely cutting the bank, and thus losing all control over the water. Begun in 1891, it was completed in 1892, and used for the first time during the flood of that year.

The Lahîm bridge at the entrance to the Fayoum was fitted with improved regulating apparatus, so that the security of the Fayoum in a dangerous flood is much increased.

Many other useful minor works were carried out in Upper Egypt, thirty-seven of these regulators and syphons having been built in different parts of the country at a cost of £ E. 13,156.

The special loan for "sharaki"* works was exhausted, and the works, as designed by Colonel Ross, brought to a completion. The amount expended in Upper Egypt under this head in 1892 was £ E. 51,950.

In 1891 the wheat crop in Upper Egypt was a failure, owing to climatic causes, so that the great benefit conferred by these works was not felt as it ought to have been. But I may mention here that even though the yield of the crops in the basins was poor, the benefits caused by the facilities of regulation, manipulation, and early supply of the water charged with deposit were most thoroughly appreciated by the people and acknowledged by them.

In Lower Egypt the most important irrigation works carried out in 1892 were in the Provinces of Gizeh and Behera. In the former a large new feeder canal from the river, 50 kilom. in length, was completed. Its cost was £ E. 25,000. It provides flood water at a high level, direct from the river, to the high lands of the Gizeh Province. Before this canal was made the Gizeh basins received the greater portion of their supply from the escape water of the Beni-Suef basin chain, and as this water had already deposited all its silt in the Beni-Suef basins, it did little to fertilize the Gizeh lands.

The area under maize has increased since this canal was opened, and it will doubtless increase considerably in the future.

In Behera the scheme known as the "Khatatba Remodelling Scheme" was continued. This project, which was begun in 1891, is one for enlarging two channels on either side of the Cairo and Alexandria railway line from the Tewfikieh station to

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* "Sharaki" is the term applied to lands whose water supply depended formerly on the height of the Nile They were irrigated when the Nile rose to a high level, but obtained no water when the flood was defective. The object of the works to which allusion is made above has been to assure an annual supply of water, so far as is possible, to this description of land.

/ / .

Damanhoor, and building the necessary masonry works for regulation. The object of the remodelling is to enable some 25 badly aligned kilom. of the old Khatatba Canal, where it runs through the lands, obstructs drainage, and water-logs the soil, to be abandoned.

These two new channels will carry the whole supply of the Khatatba Canal on lines affording far greater facilities for irrigation than the old one. This work has not yet been completed. £ E. 16,542 were spent on it in 1892.

In the other provinces a number of minor works were carried out. Though none of these works were very large, yet they will greatly facilitate the distribution of water, and give a more effective control over its regulation.

Three new navigable lines were opened up in the Gharbieh Province by the construction of four locks and one regulator. These were commenced in 1891, and completed in 1892, at a total cost of £ E. 19,579. These lines now enable boats to pass from Lake Barillos up the canals to the nearest railway line, greatly facilitating the transport of produce from what is known as the "barari," or lands bordering the lake.

By the modification of two regulators on the Khatatba Canal (Behera Province) navigation is now possible during six months of the year on a length of 91 kilom. from the Barrage. This improvement was effected at the small cost of £ E. 310.

A fair amount of work was done in 1892 under the head of drainage, and the general scheme has advanced another step on the road to completion. More progress was made in this direction in the Sharkieh and Dakahlieh Provinces than in any other during the past year. In all £ E. 33,820 were spent under the special loan for drainage works.

110 kilom. of new drains were commenced, and 75 kilom. completed; several of the existing drains were deepened and enlarged.

A large double syphon of masonry was built under the Wadi high-level canal in the Sharkieh Province. It cost £ E. 6,414, and will enable a large tract of country, formerly water-logged owing to bad alignment of canals, to be thoroughly drained.

Although a great deal has been done in the way of drainage during the past five or six years, much still remains to be done.

The special loan is nearly exhausted, and the ordinary Budget will not enable the Public Works Department to do more than a very small amount work in the direction of drains in any one year.

It is impossible to over-estimate the benefits, direct and indirect, caused by the better drainage of the country. The results are seen in the way in which the taxes now come in, and in the increased yield of the crops in the Deltaic provinces.

The Mudirs are the first to allow that the ease with which taxation is now collected, as compared with former times, is quite as much, if not more, due to the drainage operations that have been carried out of late years as to the improvements which have been made in the irrigation system.

The Public Works Department repeatedly gets requests from the Mudirs demanding the drainage of certain tracts. The land-owners themselves are fully alive to the necessity of drainage, and those who have seen the advantages that have accrued from it in the drained localities clamour for the same advantages to be given to their own tracts.

Much has certainly been done, but very much yet remains to do; the ordinary Budget is only sufficient to meet the needs of irrigation works; drainage works are costly, owing to the heavy cubes of earthwork, and to the massiveness of the masonry works required for carrying them under the network of existing canals.

It is to be hoped, then, that the Government will see its way to assisting the Public Works Department towards the completion of the drainage of Lower Egypt.

The Irrigation Department is at present preparing a scheme and estimate for the completion of the drainage system.

Considerable progress was made in the construction of agricultural roads during 1892.

In the year 1890, 209 kilom. of new roads were completed in the Sharkieh and Dakahlieh Provinces at a cost of some £ E. 11,000.

In 1891, 34 kilom. were completed in the Beni-Suef Province, and roads were put in hand in the Behera Province.

The works actually done in 1892 were as follows:—

| | Kilogrammes. | Costing— |
|---|---|---|
| | | £ E. |
| Minieh Province .. .. .. .. | 73 | 5,445 |
| Fayoum „ .. .. .. .. | 150 | 11,200 |
| Sharkieh „ .. .. .. .. | 23 | 1,016 |
| Behera „ .. .. .. .. | 92 | 8,107 |
| Total .. .. .. | 338 | 25,768 |

Since 1889 a total length of new roads amounting to 571 kilom. has been constructed, at a cost of £ E. 39,822.

The following new road projects have already been agreed to by the Provincial Councils:—

In Kalioubieh Province, two roads.
In Gharbieh Province, two roads.
In Sharkieh Province, two roads.
In Behera Province, two roads.
In Dakahlieh Province, two roads.

These roads represent a total length of 238 kilom.

It is hoped that the above will be well advanced towards completion by the end of 1893.

All these roads are bridged throughout their length, and the whole of the money expended in their construction has been supplied by the land-owners themselves.

In 1889, when the experiment was first tried, there was considerable opposition to their being made, and even the Mudirs looked doubtfully on the scheme. Now, on the contrary, each Irrigation Office contains demands for new roads, and there is no doubt that the facility they have given for transport of produce has been much appreciated.

A great deal was done in the way of river protection in 1892, both in Upper and in Lower Egypt. Stone groins were built, and bad places faced with stone. Great additions will have to be made to these works, however, before the banks can be considered as thoroughly protected.

The Public Works Department is at present engaged in considering and working out a scheme, both as regards the payment of the corvée called out on the Nile banks during the flood, and for the completion of the Nile protection works in a shorter period than is possible with the limited funds annually available. The question is chiefly one of finance, and of the possibility of getting an advance, or an increased yearly allotment.

In 1892 a special establishment was appointed to take up the study of storage reservoirs in Upper Egypt, with Mr. Willcocks as its Director-General.

Mr. Willcocks had spent the previous year making surveys and levels of the river up to Halfa. But it was only in 1892 that a regular branch of the Irrigation Service was founded for the purpose of this study.

It is only when a big project like the above is taken in hand and worked out in detail that it is found what an enormous amount of work is entailed.

I understand that the progress at present is as follows:—

The final designs for the possible reservoir sites at Kalabsha, Assouan, and Silsila have been calculated, drawn, and estimated. All field work in connection with the capacities of the reservoirs is completed, but there is much plotting and calculation still to be done.

The trial surveys and borings in connection with the Wadi Raian project are complete, and the final alternative lines* are now being laid out on the ground, and final borings made along each line. As these lines will be what is termed technically "lock-spitted" through the desert, the members of the Commission appointed to report on the project will be on as sure ground when they inspect the proposed lines as they will be when they stand upon the site of one of the proposed reservoir dams.

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* These lines are those of the proposed "feeder" canals from the river to the depression. These lines where they cross the passes were never actually surveyed before. They have now been surveyed and levelled, and borings taken along their whole length. The estimate submitted now will be, for the first time, one compiled from actual fact.

It will be seen from the above that the work is in a very advanced state, and were it not for one important study the complete project might perhaps be produced within the next four or five months.

The study alluded to is, however, in many ways the most important of all, and it is certainly the most difficult and complicated to work up: it is the question as to what will be the regimen of the Nile in flood, supposing the basin irrigation to be replaced by summer irrigation; or, in other words, what difference will be made in the flood level at Cairo, and in the duration and times of the maximum floods.

Again, supposing that the Wadi Raian is to be used as a storage reservoir for Lower Egypt, how will this affect the possibilities of ever afterwards abolishing the basins in Upper Egypt? All these are questions requiring most serious study and consideration, and it is this solution that entails delay in submission of the project.

Throughout the very high flood of 1892 the discharges at Assouan and Cairo were measured, and discharge diagrams are being made for these two gauges.

The water-level at different stages of the flood between Wady Halfa and the Barrage has been noted, and points fixed by level and survey between Wady Halfa and Sohag.

Cross sections of the Nile Valley are being taken, and an exact series of slopes and levels brought down from Assouan to Cairo.

Throughout the coming flood a very large number of discharges, both of the river and basin canals, will be taken, so that by the end of the flood the Public Works Department may have sufficient data to enable them to produce reliable calculations as to what will happen in future under the proposed changes in the regimen of the river.

I mention the above details to show what a great amount of important work still remains to be done this year. Mr. Garstin informs me that he has every hope that the complete project will be presented for consideration in the spring of 1894, and that no pains will be spared on his part to do so.

The amount of Tables and figures to be compiled and checked are, however, numerous, and this part of the work cannot be hurried.

What is wanted is that Egypt shall have the best possible reservoir, whether it be in the Wadi Raian or in the Nile Valley itself formed by means of artificial dams.

To enable a decision to be taken on one of these projects, it is necessary to carefully study the question from every point of view, and to consider every possible result.

Considerable changes took place in the staff of the Public Works Department in 1892. On the retirement of Sir Colin Scott Moncrieff and Colonel Ross, Mr. Garstin became Under-Secretary of State for Public Works, while the Inspector-Generalship of Irrigation was divided into two parts, one for Lower and one for Upper Egypt, Mr. Foster taking the former, and Major Brown the latter.

Two new English Inspectors of Irrigation were appointed from India, Mr. Wilson and Mr. Fagan.

One very important step was taken, viz., the appointment of two Egyptians as Inspectors of Irrigation, Ismaïl Bey Sirry and Mahmoud Bey Sidky. Two of the best native subordinates were promoted to be personal assistants to the Inspectors with a view to their receiving such a training as might enable them at some future time to be promoted to the charge of an irrigation circle themselves.

As the experiment was begun only a few months ago, it is as yet too early to give a definite opinion on the subject. From what I hear, however, I have every hope that it will be a success, and that these men will prove themselves worthy of the confidence that has been placed in them.

### 8.—*Public Works other than Irrigation.*

Some useful buildings have been constructed during the past year. Thus, Abdin Palace, which was partially destroyed by fire in 1891, has been nearly rebuilt; a new hospital has been constructed at Zagazig; new buildings have been erected for the police and district staff in several of the chief villages of the country, &c.

Under the very competent superintendence of M. Barois, considerable progress has been made in the project for draining Cairo. A large amount of survey work and levelling had to be done before the project could be considered in detail. I am informed that detailed plans and estimates will probably be ready for consideration by June or July this year.

I may also mention, as a point which will be of special interest, both to Egyptologists and to the very numerous body of tourists who now visit Cairo each winter, that the Government contemplates building a new museum on the right bank of the Nile, to take the place of the Ghizeh Museum, which is not fire-proof. It is proposed to offer a prize of 1,000*l*. for the best plan for a new Museum, the cost of which is not to exceed £ E. 130,000.

Whilst on the subject of Egyptology, I may mention that the Archæological Department is working most satisfactorily under the able direction of M. de Morgan. One of the unfortunate circumstances connected with the government of Egypt is that it is almost impossible to treat any question, however remote it may be from the sphere of politics, without exciting international jealousies. This is what happened not long ago in the case of the Archæological Department. The Department has from its origin been mainly in French hands. Indeed, it may be said that the existence of Egyptology as a science was, in the first instance, mainly due to the genius and industrious research of French *savants*. A few years ago a good many complaints were made by English and German Egyptologists as regards the working of the Department. The fact that these complaints were made instantly gave rise to the suspicion amongst the more ill-informed portion of the French community, not only in Egypt, but also to some extent in France, that there was some deliberate intention of substituting English for French agency in the management of the Department. The suspicion was wholly unfounded. No such ungenerous intention existed.

I am glad to say that a greater degree of harmony is now restored. Every one appears to be agreed that the Department is working very well. Far from complaints, I hear nothing but praises from Englishmen who are interested in the subject; whilst those Frenchmen whose suspicions of English intentions were formerly aroused must, it may be hoped, by this time have appreciated the fact that their fears were groundless. I should add that, amongst all reasonable and moderate men on either side, there can be but one wish in connection with this subject, namely, that the knowledge of Egyptology should advance, and that it should not become a subject for petty international jealousy and discord.

### 9.—*Railways.*

The following figures show the remarkable increase of the Railway receipts during the last five years:—

| | £ E. |
|---|---|
| 1888 .. .. .. .. .. .. .. .. | 1,270,000 |
| 1889 .. .. .. .. .. .. .. .. | 1,301,000 |
| 1890 .. .. .. .. .. .. .. .. | 1,408,000 |
| 1891 .. .. .. .. .. .. .. .. | 1,631,000 |
| 1892 .. .. .. .. .. .. .. .. | 1,680,000 |

If the rate of increase in the year 1892 has not been so great as in the preceding years, the difference is solely due to the shortness of the cereal crop during that year, the receipts from the transport of cereals being £ E. 95,000 less than those of 1891.

The number of passengers in 1891 was 5,612,562. In 1892 it increased to 7,047,295, being an increase of 1,434,733. The increase was mainly in third-class passengers.

The year 1892 has been one of experiment as regards the passenger traffic. During the year 1891 return tickets, with a reduction of 25 per cent., were, for the first time, issued to third-class passengers. The result obtained by this reduction led the Administration to adopt further reductions in their passenger tariff. It was observed that no more than 20 per cent. of the passengers travelled a greater distance than 50 miles, a fact which seemed to indicate that the tariff for long distances was too high, and it appeared desirable that the reduction should be such as to lead to an increase of long-distance travellers. It was, therefore, decided to adopt a tariff based on a sliding scale, under which the rate per kilometre was reduced as the distance travelled increased.

This tariff was tried as an experiment on return tickets only from the 1st February, 1892, with the result that in the period from that date till the end of October there was an increase in the number of passengers of 1,001,375, or 24 per cent., and in the receipts of £ E. 16,030, or 5 per cent.

This result was considered so satisfactory that it was decided to fix the tariff for single tickets on the same basis from the 1st November.

The new tariff has only been in operation three months, but during that period there has been an increase of 601,975, or 38 per cent., in the number of passengers, and of £ E. 34,440, or 13 per cent., in the receipts. As these three months have given such a good result, it may reasonably be expected that the increase will continue even in greater proportions.

In the course of the year the rate for luggage was also reduced by more than 50 per cent.

The following Table shows the weight of, and the receipts from, the principal articles of merchandize carried by the railway in 1891 and 1892:—

| | 1892. | | 1891. | |
|---|---|---|---|---|
| | Metric tons. | £ E. | Metric tons. | £ E. |
| Cotton and seed .. .. | 675,730 | 460,350 | 574,400 | 391,750 |
| Cereals .. .. .. | 313,610 | 148,850 | 499,620 | 244,375 |
| Sugar and molasses .. .. | 104,920 | 67,850 | 85,120 | 56,950 |
| Coals .. .. .. .. | 360,040 | 118,700 | 291,540 | 96,900 |
| Miscellaneous articles.. .. | 993,500 | 357,750 | 638,720 | 347,000 |
| Total .. .. | 2,447,800 | 1,153,500 | 2,089,400 | 1,136,975 |

The first three items represent almost entirely the produce of the soil of Egypt carried to Alexandria for exportation. The increase or decrease of these items depends naturally on the results of the harvest.

The steady increase of the receipts from the transport of miscellaneous articles is interesting as it reflects the commercial movement of the country. Five years ago the receipts were £ E. 271,000, and since that date they have increased each year. A large part of the increase is due to the carriage of building materials, which are conveyed at specially low rates. This explains why the increase of the weight carried is proportionally much higher than that of the receipts.

The working expenses during the past year amounted to £ E. 778,000, or about 43 per cent. of the total receipts.

Notwithstanding the large additions made previously to the rolling stock, it proved insufficient for the increased requirements of the service. It was found necessary to purchase 24 locomotives and 890 carriages and trucks during the year.

The Embabeh bridge (near Cairo) connecting the railway system in the Delta with the Upper Egypt line was finished and opened to traffic last year.

The Assiout-Girgheh extension continuing the Upper Egypt line 79 miles to the south was also completed, and a small suburban line of about 5 miles was constructed at Alexandria.

The railway bridge over the Nile at Mansourah has made good progress, and will probably be opened to traffic in the month of June 1893.

The narrow-gauge railway between Port Saïd and Ismaïlia will also be completed during the year 1893.

Several projects of extension of the railway in different parts of the country are under consideration.

Lastly, I may mention that a new terminal station is in course of construction at Cairo.

### 10.—*Telegraphs.*

The reduction of the inland rates for telegrams by nearly 50 per cent. has led to a most remarkable increase in the telegraph traffic.

The number of telegrams sent in the last three years, and the corresponding receipts and expenditure of the Department, are as follows:—

| | Number. | Receipts. | Expenditure. |
|---|---|---|---|
| | | £ E. | £ E. |
| 1890 .. .. .. | 311,362 | 35,000 | 35,000 |
| 1891 .. .. .. | 544,075 | 34,500 | 38,500 |
| 1892 .. .. .. | 622,690 | 40,250 | 45,400 |

This Table shows that owing to the reduction of the rate the number of telegrams has doubled in two years, the receipts increasing in the same time by about 15 per cent. It is true that the expenses have increased in even a greater proportion, but this was due to the increase of the staff and the purchase of wire and instruments that had to be made to cope with the additional traffic. That part of the expenditure for materials can, however, be considered a capital expenditure that will not occur again in the same proportion.

In my Report of last year I drew attention to the fact that the deficit in the Telegraph Budget was more apparent than real, as the expenditure included the cost of the railway telegrams, whereas no credit was given for this service in the receipts. This anomaly has been rectified in the Budget of 1893, and the Railway Department has been charged with the estimated cost due for the transmission of its telegrams. The effect of this measure will be that in the acounts of 1893 the telegraph receipts will exceed the expenditure.

### 11.—*Port of Alexandria.*

The receipts and expenditure of the Port of Alexandria for the last two years has been as follows:—

| | 1891. | 1892. |
|---|---|---|
| | £ E. | £ E. |
| Receipts .. .. .. .. | 127,000 | 136,000 |
| Expenditure .. .. .. .. | 22,500 | 24,000 |
| Net revenue .. .. .. | 104,500 | 112,000 |

1,356 Steam-ships, with a tonnage of 1,945,497 tons, and 936 sailing-vessels, of 126,715 tons, cleared from the port of Alexandria in 1892, against 1,223 steamers, of 1,503,280 tons, and 935 sailing-vessels, of 129,721 tons, in 1891.

633 British steamers, of 839,840 tons, cleared in 1891, as against 658 steamers, of 922,935 tons, in 1892. Although there is an increase in British tonnage in 1892, it represents 47 per cent. of the whole, instead of 51 per cent. in 1891.

To increase the accommodation for ships arriving at and clearing from the port of Alexandria, an arrangement has been made with the Commissioners of the Debt by which they have consented to advance a sum of £ E. 30,000, payable by annuities to be charged to the Budget of the port, for the construction of a new quay with berths for four steamers.

This new quay is expected to be finished in 1893.

### 12.—*Lighthouses.*

The revenue and expenditure of this Department for the years 1891 and 1892 were as follows:—

| | 1891. | 1892. |
|---|---|---|
| | £ E. | £ E. |
| Revenue .. .. .. .. | 123,000 | 110,000 |
| Expenditure .. .. .. .. | 26,000 | 28,000 |
| Net revenue .. .. .. | 97,000 | 82,000 |

It will be seen that there was a considerable falling-off in revenue during the year 1892 as compared to 1891. I am informed that this is due to a diminution in the tonnage of the ships passing through the Suez Canal.

In October 1889 a Commercial Convention was signed between Great Britain and Egypt, in which it was stipulated that the light dues should be reduced by £ E. 40,000 a-year, "as soon as the tariff provided by the Convention is applied to all the Powers." In my Report of last year I stated that Conventions had been signed with Austria, Belgium, Great Britain, Italy, and Portugal. I may now add that in the course of the past year a Commercial Convention was signed between Egypt and Germany.

It is hoped that the work of widening the pass at the entrance of the harbour of Alexandria will be finished next month. It will be 300 feet wide and 30 feet deep, and, with the addition of the lighthouses recently constructed at Alexandria, will enable ships to enter the harbour at all hours of the day or night. Difficulties in the way of construction have retarded the completion of this work.

### 13.—*Khedivial Mail-Packets.*

The receipts of the Khedivieh Mail-Steamers Administration amounted for the year 1892 to £ E. 136,000, against expenses for the ordinary working of the service, amounting to £ E. 104,000, leaving a surplus of profit amounting to £ E. 33,000.

The business of the Administration has suffered by the prevalence of cholera and the application of quarantine measures both in the Red Sea and the Mediterranean. Thus, instead of accomplishing twenty-six voyages according to the Red Sea itinerary, only fourteen complete regular voyages were made. On the Syrian coast, instead of fifty-two voyages, only thirty-six were made.

Three new steamers were placed on the Constantinople line, and commenced a accelerated service from the 25th May. It is believed that as they become better known to travellers the number of cabin passengers carried by these steamers will considerably increase.

### 14.—*Army.*

Since my last Report the cavalry of the Egyptian army has been increased by two squadrons, and the artillery by one garrison company. The depôt battalion has been abolished, and two companies have been added to each of the eight Egyptian battalions. The Soudanese battalions have been increased by a total of 300 men, and the Cadet Corps by 50 cadets.

The Egyptian army now consists of 7 squadrons of cavalry, 3 batteries of field and 4 companies of garrison artillery, 4 companies of the Camel Corps, 8 battalions of Egyptian infantry, 5 battalions of Soudanese infantry, and 2 companies of the Transport Corps; making a total numerical strength, including staff, commissariat, &c., of 14,718 officers, non-commissioned officers, and men, 18 field guns, and 2,153 animals (horses, mules, and camels). The estimated expenditure on the Egyptian army for the current year amounts to £ E. 468,000, giving an average cost of £ E. 31·8 per man.

Owing to the activity of the Dervishes, both at Suakin and Wady Halfa, the garrisons of those places have been increased, Suakin by one squadron of cavalry and one battalion of infantry, and Wady Halfa by one squadron of cavalry. This drain on the force maintained at head-quarters has reduced the Cairo garrison so much as to render it almost impossible to carry out the necessary reliefs of the troops stationed at Wady Halfa and Suakin, on the principle, which had been previously laid down, of three years' service at Wady Halfa, or two years at Suakin, to one in Cairo. Military service is therefore rendered far more arduous than heretofore to the native officers and men, who naturally desire to have some time in Cairo in order to see their relations.

The reserve at head-quarters now amounts to only 1,500 men, a force which, in view of the state of things on the frontier, is manifestly inadequate. The Egyptian Government, therefore, recently decided that it would be advisable to increase the Egyptian army by two battalions of infantry and two squadrons of cavalry. This increase would have involved an additional expenditure of about £ E. 60,000 a-year. As the Egyptian Treasury was unable to provide this large sum, it was decided to address the Powers with a view to obtaining their sanction to the employment of a portion of the economies resulting from the conversion of the debt towards increasing the army. As the unanimous assent of the Powers was not obtained, the idea of increasing the army must, for the time being, be dropped. The result is, in the first place, that the Egyptian troops have a harder service than formerly, and see less of their native villages; and, in the second place, that, in the event of any serious invasion on the part of the Dervishes, the probability of having to use English troops in support of the Egyptian army is enhanced. This state of things is greatly to be regretted, but, for the moment, I am unable to suggest any practical remedy.

Before quitting the subject of the army, I should wish to mention that the slight reverse recently sustained at Ambigol, though greatly to be regretted, is not a circumstance in any way calculated to shake the confidence which may now justly be entertained in the efficiency of the Egyptian army.

I should also note an administrative change of some little importance which was made during the last year. Until recently the Government conceded the right to sell gunpowder in Egypt to private individuals, who were generally foreigners. It was found that this system resulted in large quantities of gunpowder being smuggled through Egypt into the Soudan, where the demand for this commodity is naturally very great. The various Concessions have now been relinquished. The sale of powder throughout the country has been confided to the Egyptian War Office. It is hoped that the War Office authorities will thus be able to check the traffic in gunpowder with the Soudan.

### 15.—*The Soudan.*

During the past year the Dervishes have shown increased activity both in the Nile Valley and in the Eastern Soudan. Between Dongola and the advanced Dervish post at Suada a force of about 5,000 men has been kept under arms. A short time ago a force of over 600 Dervishes was dispatched to cut the railway connecting Wady Halfa and Sarras. This raid failed, owing to the precautions taken by Colonel Wodehouse, but the Dervishes were able to surprise and outnumber 120 of the Egyptian Camel Corps, who had been sent to follow up their retreat. The Egyptian soldiers fought courageously, but having lost their two senior officers, Captain Pyne and Adjutant-Major Fuad Effendi, they were defeated with a loss of thirty-four men killed and fifteen wounded. The Dervish loss was more than double this number.

Osman Digna has recently reappeared in the neighbourhood of Suakin with a force varying in number. His principal object appears to be to raid on the local Arabs, whom Colonel Hunter, the Governor-General of the Red Sea Littoral, has done his utmost to protect, and has so far succeeded that up to the present time their losses have been insignificant.

The Dervishes have only once come into actual contact with the Egyptian forces in the neighbourhood of Suakin. A few months ago they attacked the post of Temrin, in the Tokar Delta, but were driven off with a loss of about seventy men. The instructions which Colonel Hunter has received are that he is not to undertake any distant expedition, but that the Dervishes are to be attacked whenever they come within striking distance—a term which has been roughly defined as a distance within a day's march of the positions now held by the Egyptian forces.

As regards the question of the general policy to be adopted towards the Soudan, I have nothing to add to the remarks made in previous Reports. The attitude of the Egyptian Government must for the present, and, I think, for a long time to come, be strictly defensive, by which I mean that it is for the time being neither possible nor desirable for the Egyptian Government to make any attempt to reconquer the Soudan. Whether, in the event of an attack being made or contemplated by the Dervishes, the Egyptian forces should remain in their present positions, or whether they should so far take the offensive as to move out a short distance and drive away the enemy instead of awaiting his attack, is a question which can be decided on purely military grounds as each occasion arises. In any case, an offensive movement under such circumstances would not in any way involve a departure from the general line of policy which has been adopted for the last few years, and to which, in the interests of the taxpayers of Egypt, it is essential that the Egyptian Government should adhere.

It is possible, though I do not think it probable, that the Dervishes may again make a serious attack on Egypt, such as that undertaken by Wad-el-Nejumi a few years ago. It is more probable that a series of raids of the nature of those which have occurred lately will be undertaken. All that can be done is to repel them. This state of things is not satisfactory. It is very desirable that the frontier should be tranquil, and that there should be no interruption in the ordinary course of trade with the Soudan. But for the present I fear that this evil must be borne. I can suggest no immediate remedy. Indeed, there are only two possible remedies: one is reconquest, and the other is negotiation with the Dervishes. I have on many previous occasions stated the objections to the adoption of the former of these two courses. As to the latter also, I can only repeat what I have said before, namely, that, whether the negotiations be conducted by Christian or Mahommedan agents, it is, under present circumstances, hopeless to expect that they can be productive of result.

The most important incident of the past year bearing on the ultimate fate of the Soudan is, in my opinion, the opening of the railway between Assiout and Sohag. It is to be hoped that arrangements will shortly be made to extend the line to Luxor.

Should it be found financially possible to extend the railway gradually up the Nile Valley until it reaches Wady Halfa, the question of effecting some change in the relations at present existing between Egypt and the Soudan may possibly have to be reconsidered. For the present, however, this question can scarcely be regarded as within the domain of practical politics.

I may add that recent accounts go to show that the southern provinces of the Soudan are in a very disturbed condition. If these accounts be correct, it is likely that, for the time being at all events, no large Dervish force will be available for an attack on the Egyptian frontier.

### 16.—*Justice.*

The Department of Justice has been occupied with the simplification of the procedure of the Native Tribunals, and the steady development of the judicial reforms instituted in the previous two years. The Native Tribunals now enjoy the respect and confidence of the people. The restriction of the choice of Judges to men who have received a legal training, the allocation of adequate judicial pay, and an unvarying regard for judicial independence, have effected this change, which is all the more noteworthy, inasmuch as it has been mainly effected through native agency. Only one-third of the Appellate Court is European, the rest are Egyptians. The whole of the Judges of First Instance throughout the country, 103 in number, are Egyptians, with the exception of a Belgian at Alexandria and two Maltese gentlemen at Cairo. It can now be said that justice in Egypt is administered on fixed principles, and, with occasional exceptions, the decisions are just. There are no arrears. All the Tribunals are fairly abreast of their work. The fees of Court, which pressed hardly on the poorer suitors, are about to be changed, so as to greatly cheapen justice where petty claims are concerned. It must, however, be added that this improvement and purification of justice has not been wholly automatic and Egyptian. It has been much aided, and continues to be much aided, by the European Committee of Judicial Surveillance described in my last year's Report. A system of vigilant control and supervision is thus maintained, and in spite of a certain amount of theoretical opposition to its creation before the Committee was formed, it has been loyally accepted by the Native Judiciary, and it has produced a higher standard of judicial work and a sounder jurisprudence. The Committee, of course, confines its operation strictly to general supervision. By a vigilant examination of the judicial work done, it is enabled to check indolence or ignorance in the appreciation of facts, and to prevent the continuance of any erroneous interpretation of the law. But it never interferes with judicial independence, by attempting either to guide or alter the decision of particular cases.

The statistics of the Tribunals show that the Courts of Summary Justice have supplied a general want in the country. Egypt is a strictly agricultural country. The mass of the population is very poor. Thus, civil disputes are consequently simple in character and small in amount, and the one Judge system, spread over the land, is best fitted for their settlement. There are now thirty-five of these local Courts in Egypt, in addition to the seven Tribunals and single Court of Appeal which administered all the native justice three years ago. The seven Tribunals act as Appeal Courts from the local Courts. Thus, while the Committee of Surveillance keeps up the general standard, a cheap and rapid appeal to a Court of three Judges prevents particular injustice.

As regards criminal justice there is progress also. The punishment of crime is more certain. The large bands of brigands who terrorized whole districts no longer exist. The number of murders was also diminished from 347 in 1891 to 270 in 1892, and only one-third of the number are due to a desire to rob. The rest are caused by vengeance, jealousy, and land disputes. But there is still much highway robbery and cattle-lifting, and the number of small offences which come up for trial has greatly increased. This last fact is due, not to an increase of criminality, but to the greater activity of the police and the increased facilities for trial and punishment. The proportion of cases where the authors of crime are found and condemned, although it has improved, is still unsatisfactory. Thus, in 1892, out of 2,350 crimes, in only 779 cases was evidence enough found to send the case to trial. Of these, the lower Courts condemned in 568 cases, but that figure was reduced to 418 by the Court of Appeal, which examines evidence very strictly. The causes of this want of certainty in the repression of crime are manifold. It is due partly to an absence of public spirit. The people do not aid the prevention and detection of crime. They will not speak to what they know. Recently, in a town of Upper Egypt, a brutal murder of a woman occurred under circumstances which made it certain that the assassins were known. "At least fifty people," a high native official on the spot said, "must have known all about it, but they will not tell." Months of laborious police investigation produced no result, and the crime has gone unpunished. The want of evidence is also due to a fear of vengeance in case the accused is acquitted, and it is further due to a want of a strong village organization. Village watchmen do the duties of rural police, and there is a village Headman. But this Headman is not a paid official, nor is he held responsible for the crime in his district.

Considerable progress would be made in the repression of crime if some means of remuneration, either in money or in privileges or in some forms of local advantage, could be found for the village Headman, and if he were then made responsible for his district to the police. Another reason for the prevalence of crime may be found in the fact that the prisons are not, as a rule, so constructed as to admit of the enforcement of prison labour and strict discipline, and consequently the prison is not a place sufficiently dreaded.

The relations of the police with the "Parquet," or Public Prosecutor's Department, have improved, but there is room for further improvement. In the detection of crime the police are legally under the Parquet, but the police accept this subordinate position with difficulty, and the Parquet does not sufficiently guide the police, and is too apt to use the insufficiency of the police as an excuse for the failure in the repression of crime, instead of accepting the responsibility of failure themselves.

The "Mehkemeh Sharia" remain in much the same state as they were twenty years ago. They administer the law of personal status, which is based on the Koran, and is deemed a religious law. Interference on the part of Europeans with an institution of this character is out of the question, but I may remark that the Mehkemeh Courts can hardly be in a satisfactory state so long as the Cadi, or Judge, is not paid a salary sufficient to provide him with the needs of life on a respectable scale. With better judicial pay and a good system of legal education, such as the other native Judges now receive, the village Cadi might add to his present duties those of a Petty Magistrate, or "Juge de Paix," to whom would be intrusted the punishment of all petty offences and the settlement of all petty disputes.

I should add that the quinquennial period for which the powers of the Mixed Tribunals were extended in 1889 will expire in February 1894. The Egyptian Government is about to enter into negotiation with the Powers with a view to settling the terms on which the powers of these Tribunals shall be extended for a further period of five years.

### 17.—*Police.*

A variety of useful reforms were effected in this Department during the past year. It would lead me to undue length were I to attempt to describe them in detail. I would, however, mention two points of some importance.

In the first place, the relations between the Parquet and the police are more cordial than heretofore. Secondly, considerable progress has been made in organizing the village watchmen ("gaffirs").

Serious crime has diminished. In the year 1892 there were 332 murders, or 55 less than in 1891; 48 gang robberies, or 72 less than in 1891; and 445 serious robberies not included under the above head, or 58 less than in 1891. Three of the most notorious leaders of robber gangs were shot or captured in Upper Egypt during the year, with the result that the Province of Ghirgeh, which was formerly disturbed by their depredations, is now quiet. In Lower Egypt the Province of Sharkieh is for similar reasons now practically free from crime.

Although, for the reasons which I have stated above, my remarks on this subject have been brief, I should wish to add that not only is the Department of Police one of the most important in Egypt, but also that its management presents difficulties of a very exceptional description. Colonel Settle and the officers under his command are using their utmost endeavours to cope with those difficulties, and they deserve every encouragement in the performance of their arduous duties.

### 18.—*Prison Department.*

In spite of the difficulties this Department has had to contend with, in housing, feeding, clothing, providing work, and maintaining the health and discipline of an average daily number of more than 6,000 prisoners, on a limited Budget of £E. 27,250, and a restricted staff of 342 employés, the work of the year has been very promising for the future.

The average daily number of prisoners in confinement in the thirty State prisons, including the hard labour convict establishment of Tourah, during the year 1892 was 6,286, including 220 females; but this number does not include the hard labour convicts at Suakin and Tokar, or the contravention cases which are confined in specially-rented quarters or in the police district gaols.

During the year no less than 45,178 prisoners, including 4,150 women, have been received in the State prisons, including those who have for various reasons been transferred from one prison to another; whilst 37,390, including 4,097 women, have been discharged during the same period.

The work done by the Department during the year consists principally of prison building, quarrying, stone-cutting, stone-breakigg, and certain industrial labour in various prisons. The principal buildings which have been in course of construction during the year, and are now nearing completion, are the central prisons of Chebine-el-Kom and Assiout. Each of these prisons will be capable of containing 600 prisoners, and will be provided with a large number of solitary cells, a detached female prison, and a hospital for twenty beds, with its necessary dependencies.

A Special Commission was appointed at the commencement of last year, under the presidency of Mr. Justice Scott, to consider the best means of relieving the overcrowded condition of the provincial gaols, and although the majority of the proposals of the Commission were sanctioned by a subsequent Council of Ministers, I regret to say that the overcrowding still continues, owing to the indisputable fact that the existing provincial gaols are totally incapable of containing the average number of prisoners in confinement in each Mudirieh.

The Council decided that a central prison for Cairo should be built on part of the site of the Mansour Pasha Palace, purchased in 1891 for Government purposes, but up to the present moment the work has not yet been commenced. It was also decided that new prisons should be built at Alexandria and Zagazig, by convict labour, as soon as the buildings already in hand (Assiout, Chebine, and the hospitals of Tourah and Ghizeh) were completed.

### 19.—*Sanitary Department.*

16,848 patients were admitted into Government hospitals in 1892, as against 15,371 in 1891, an increase of 1,477; besides which, 2,947 cases of infectious diseases were treated in the tent hospitals.

Either the credit for hospitals must be substantially increased, or the number of admissions limited to the existing provisions (which means denying the benefits of hospital treatment to a large number of applicants), for it may be confidently expected that this number will go on steadily increasing as the prejudice against hospitals gradually disappears.

It is naturally a matter for regret that large centres of population—towns of over 20,000 inhabitants—should have no hospital, and that in towns of from 7,000 to 12,000 inhabitants there is not, in many cases, even a dispensary; but whether the Government is bound to undertake general medical relief, which receives no assistance from private charity or local funds, is doubtful.

An improved system has been introduced whereby the Sanitary Department is allotted a certain sum in the Public Works Budget, to be devoted solely to the requirements of the Department. Hitherto, the expenditure on construction and repairs has been about £E. 8,000 per annum. This year a grant of £E. 14,000 has been sanctioned. Of this sum, £E. 2,500 is pledged to be spent on improving the drainage of the mosques. The Public Works Department state they will not be responsible for the safety of Kasr-el-Aini Hospital at Cairo if £E. 8,000 are not at once spent on it (and subsequently £E. 14,000 for repairs). There remains, therefore, only £E. 3,500 for all other purposes. At least £E. 2,000 must be spent upon repairs to provincial hospitals, leaving a balance of £E. 1,500 for new constructions.* It is proposed to utilize this balance in providing Cairo with a public disinfecting station in the vicinity of the future hospital for infectious diseases.

A sum of £E. 3,000 has also been added to the actual Budget of the Sanitary

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* Since this was written the Financial Department has agreed to advance the £ E. 22,000 required for the repairs to the Kasr-el-Aini Hospital. The money is to be repaid by instalments extending over five years. The amount to be spent during the current year on the hospital will therefore be £ E. 4,500 instead of £ E. 8,000. The difference between these two sums will thus be at once available for expenditure on other objects connected with the work of the Sanitary Department.

Department, which will increase its efficiency, and effect a much-needed improvement in the pay of the medical officers, but the sum is insufficient to carry out in its entirety a complete reorganization of the service.

For the general sanitation of the country no provision exists. Local wants should undoubtedly be met by local rates, but it is to be feared that a considerable time must elapse before the inhabitants of the large towns will recognize the importance of drainage schemes and pure water supply to the extent of desiring, much less imposing on themselves, local taxation for these purposes. For the rural districts there seems little hope unless the Government undertakes the expenditure.

The personnel of the Department still leaves much to be desired, the faults being largely due to defective education. Efficiency in the future will depend upon the class of medical men turned out by the Cairo School of Medicine, on which the Department is absolutely dependent to fill its vacancies. It is, therefore, all-important that the improvement in the curriculum of the school, introduced within the last three years, should be steadily maintained. It is also very desirable that a Veterinary School should be attached to the Medical School.

One of the great wants of the country is sanitary legislation. No Public Health Act exists. The difficulty will be to frame a Law applicable alike to Egyptians and foreigners, and to obtain its acceptance by the Powers. Without domiciliary visits abuses or violations of the law cannot be detected, and to domiciliary visits foreigners in Egypt strongly object.

A beginning in sanitary legislation was, however, made last year, the subjects selected being those not likely to affect foreigners. A Decree has been passed prohibiting the drainage of mosque latrines into the Nile, canals, "birkets" (ponds), or on to waste lands, and compelling owners to construct water-tight cesspits for the mosques in those towns in which no drainage scheme is being considered.

The Decree only applies as yet to the larger towns, but an important Article gives the Minister of the Interior the power to close the latrines of any mosque in the country which are pronounced a danger to public health. This will eventually remove a great source of water pollution, as hitherto all mosque latrines, practically the public latrines of the population, drained into the nearest water supply.

To establish the system of water-tight cesspits, a sum of £ E. 5,000 per annum will be spent, £ E. 2,500 of which is to be found by the Sanitary Department, and the balance by the Wakfs Administration.

Another Law has been promulgated forbidding the digging out of soil for the manufacture of bricks within 1 kilom. of habitations. This strikes at the root of the formation of "birkets" (stagnant ponds), as nearly all the birkets in the country have been formed by the removal of earth for the manufacture of bricks in the vicinity of or within the villages.

Two important questions, the filling in of existing birkets, and the removing of cemeteries which are a danger to public health, remain as yet unsolved.

Rogers Pasha, the Head of the Sanitary Department, writes to me: "As regards the views taken by the higher class of Egyptians on sanitary matters, it is satisfactory to note that a considerable amount of intelligent interest is being developed. The Legislative Council accepted, with very slight modifications, the Decree concerning the mosque latrines, which, as a measure dealing with an old-established custom, might have been expected to meet with some opposition.

"Two Mudirs have forwarded me schemes of important sanitary legislation, while all the Mudirs and Governors it has been my pleasure to meet are unanimous in recognizing the evils which exist, and the necessity for their being remedied. They justly complain that they can do nothing without legislation and money, and that their reports and suggestions on sanitary questions have met with no practical support. Some of these reports show a thorough knowledge of the sanitary requirements of the provinces, and were the recommendations carried out the benefit to public health would be very great."

### 20.—*Egyptian Civil Service.*

In my Report of last year I drew attention at some length to the extreme importance of carefully selecting and training the native officials of the Egyptian Government. In the remarks which I had the honour to address to your Lordship's predecessor last year on this subject, I pointed out the obstacles which hampered the development of the Provincial Civil Service, and I expressed a hope that this important question might engage the earnest attention of the Egyptian Government.

I am happy to be able to report that, in the early part of last year, a Decree was passed which placed the admission and promotion of the provincial officials on a sound and satisfactory footing. In accordance with the terms of this measure, no candidate can, as a general rule, be admitted to the Higher Division of the Provincial Civil Service unless he has obtained a certificate of secondary education from the Ministry of Public Instruction. The selection and promotion of qualified candidates is confided to a small Committee composed of the Under-Secretaries of State for the Interior and for Finance. The newly-appointed candidates are not definitely admitted to the public service until they have served a probationary period of two years, during which time their conduct and aptitude must have given satisfaction to their chiefs. The higher posts must, except in a few exceptional cases, be filled from the ranks of the Service itself.

The new system has been in operation for too short a time to have as yet produced much effect upon the general standard of the provincial employés. But the distinct improvement that has already manifested itself in the class of young Egyptians who enter this branch of the Administration is a clear proof of the wisdom of the change. It is, indeed, merely a question of time for the new element to work its way up into the higher ranks of the Service, and introduce improved and more civilized methods of government into those parts of the machine where there was most need of such reform.

The very considerable success which the above measure soon attained in attracting a superior class of young Egyptian into the ranks of the Provincial Civil Service induced the Government in the latter part of 1892 to apply a somewhat similar system to the appointments in the Central Administrations of the State. A Commission was appointed to investigate carefully the whole subject, and the result of their labours was embodied in a Decree which was promulgated in December. The main principles on which this Decree was based were briefly as follows :—

1. The separation of the Civil Service into an Upper and a Lower Division; a distinction, which existed in theory under the old Regulations, but which in practice was seldom observed, was maintained. At the same time, provision was made to minimize the hardship to Lower Division Clerks whose services merited promotion to higher posts. This was the point on which the old Rules broke down. Theoretically no Lower Division Clerk could be promoted into the Upper Division without passing a competitive examination in which he was as likely as not to be defeated by some youth fresh from school. So severe a Regulation would have produced much injustice if rigorously applied, and the natural consequence was that it became a dead letter. This again was equally unsatisfactory, for young men of education, who alone would become fit to fill the higher posts of the Administration, no longer found sufficient opportunities to enter the Government service. The new Rules provide that a number not exceeding half the vacancies that occur in the Upper Division may be filled, by way of promotion, from the lower ranks. It is hoped that in this way a sufficient chance of advancement is given to the smaller officials, while making due provision for recruiting young Egyptians of position and education who may be expected later on to show the qualities necessary to take charge of the more important functions of administration.

2. The separation into two divisions will, however, in future be abolished for the technical staff, for the promotion of which it is obviously unsuitable.

3. The system for admission to the public service has been very considerably modified. Hitherto all candidates have been required to pass an examination before a Commission composed, not of professors or people connected with the art of teaching, but of delegates from the different Departments of Government. There was no authorized programme of the subjects required, and these subjects varied according to the nature of the post that might happen to be vacant. There was not even a different standard of examination prescribed for each of the two divisions into which the public service was divided. Such a system could not fail to give unsatisfactory results. Young men, desirous of entering the Government service, did not know what direction their studies should take, while the Heads of Administrations complained of the very unsatisfactory material produced.

Under the new Regulations, any idea of exacting special qualifications from the candidates who present themselves for any particular post is put on one side. All that will be required will be such a standard of general knowledge as the present condition of public instruction can supply. Every candidate, when selected, must undergo a period of probation in the post vacant, which will show, far better than any examination, whether he is qualified to fill it. The standard demanded is based on the the system of education that prevails in the country. For the Upper Division Clerks, a certificate of secondary education is necessary, preference being accorded to those candidates who possess a diploma obtained in one of the higher Government schools or in Europe. For the Lower Division, a certificate of primary education is sufficient.

4. A small Committee has been instituted in each of the principal Departments of the State for the selection of properly qualified candidates to fill vacancies which may occur. Within the limits of the lines above laid down, each Committee is free to choose the candidate that appears most fitted for the vacant post. Some such liberty of action is very necessary in a country like Egypt, where education is still in a backward condition, and is not invariably combined with the qualities even more necessary for sound administration.

5. The right of entry into the Civil Service has been strictly confined to Egyptians, but when considered expedient, non-Egyptians can be appointed with the previous assent of the Council of Ministers.

My views on this delicate subject are well known. A certain number of Europeans are, in my opinion, absolutely necessary in some of the higher posts. But they should be limited as strictly as possible, and a steady opposition offered to any attempt to admit them into posts which natives are competent to fill. It is, therefore, a wise disposition to reserve to the Council the decision in these cases.

Besides improving the material from which the public service is recruited, the system I have described above will give a very great impetus to the spread of education in this country. With an assured prospect of employment in the Administration before them, a very considerable increase must take place in the number of those who apply for the secondary and primary certificates of education. Parents will more willingly spend money in having their children taught when they feel that they are thereby providing them with a certain future. As time goes on, the number of candidates properly qualified will increase, until the standard can be raised, and only those provided with diplomas from the higher schools admitted into the Upper Division. The secondary certificate will then become the natural test for the Lower instead of the Higher Division.

## 21.—*Education.*

Progress in educational work in Egypt has never in any previous year been so clearly marked as in 1892. The relations between the Department of Public Instruction and the various State Administrations have undergone a complete change. Until recently it was very generally thought that the Department of Public Instruction was too lenient in granting certificates. Their certificates, therefore, did not possess any real or definite value. All this has now been changed. On the one hand, far greater stringency than heretofore is exercised in granting certificates. On the other hand, as your Lordship will have observed from my remarks under the head of the "Egyptian Civil Service," the possessors of certificates have been placed in a privileged position as regards admission into the public service. If this system is steadily persevered in, the result cannot fail to be that the efficiency of the public service will be increased, and that public confidence in the Department of Public Instruction will be strengthened.

One of the good effects of the new recognition of the examination system of the Public Instruction Department will be to bring, to some extent, under its influence the numerous and important private schools throughout Egypt which are in no way under the supervision of the Department. Pupils in these private schools can no longer hope for admission to the Civil Service unless they present themselves at the examinations for the primary and secondary education certificates of the Public Instruction Department. In this way the Department will have the means of testing the character of the instruction given in these schools, and evidence is already forthcoming that their system of teaching will gradually be made to conform to the primary and secondary courses of study prescribed by the Department in its Educational Code for Egyptian schools.

The Sanitary Administration, the Ministry of Justice, and the Railway Administration have, during the past year, actively co-operated with the Public Instruction Department in recasting the programmes of study for the Medical School, the School of Law, and the Polytechnic School respectively. The adoption of this system of mutual co-operation marks another new departure in the history of the

Public Instruction Department. The services rendered during the past year by the most highly qualified specialists of other Administrations, by giving a practical direction to the courses of study in the professional and technical schools of the Public Instruction Department, should be productive of great good. By actively co-operating with the various Administrations directly interested in the technical or professional training of their future employés, the Public Instruction Department has given practical proof of its recognition of the essential solidarity of all the branches of the public service.

More modern methods of administration are being introduced. During the past year the School Management Committee, a body representative of all the various interests of the Education Department, made itself felt as a real power. It was consulted upon all important questions, pedagogic and administrative, and its recommendations were almost invariably acted upon. So significant and necessary a change in administrative policy has been the principal cause of recent educational progress in Egypt, and the growth of public confidence in the Ministry of Public Instruction.

The statistics of school attendance and school fees for 1892 show a steady advance upon all previous years. In a country where but recently boys had to be systematically paid for coming to school, the rapid growth in revenue from school fees must be considered as one of the most striking proofs of the change which has come over the public mind with regard to the importance and value of education. In 1881 only 30 per cent. of the school attendance consisted of paying pupils. The receipts on account of school fees amounted to £ E. 2,323. In 1892 73 per cent. of the total attendance of 7,800 consisted of paying pupils, and the receipts reached £ E. 21,247.

The progress achieved in the primary schools of the higher grade during 1892, though somewhat slow and unequal, was on the whole distinctly satisfactory. The first examination for the primary education certificate, held in June last, afforded the Education Department a new means of testing the efficiency of the teaching in these schools. The examination for the primary education certificate is open to all candidates, whether they have been educated in a Government school, or in a private school, or at home, and is conducted at three local centres—Cairo, Alexandria, and Assiout—by Boards of Examiners specially appointed by the Education Department. In June last 568 candidates presented themselves for examination, of whom 88 came from private schools, and 212 obtained the primary education certificate. The majority of the successful candidates have since been admitted to the secondary schools.

The causes which prevent more rapid and solid progress in the primary schools are threefold :—

1. The dearth of properly qualified teachers;
2. The almost total lack of Inspectors; and
3. The unsuitability or dilapidated state of the buildings used for school premises.

Previously to 1880 no attempt had ever been made to give teachers a professional training. Since that time three Normal Schools have been created, one (Dar-el-Oloom) for teachers of Arabic and the subjects taught in Arabic in the Government schools, the second (Tewfikieh Normal School) for teachers of French and the subjects taught in French, and the third (Khedivieh Training College) for teachers of English and the subjects for which English is made the medium of instruction. The work of the Normal Schools has, however, been very seriously affected by the inadequacy of the Budget of the Public Instruction Department. The salaries paid to teachers are so low, and the prospects of promotion so limited, that it is extremely difficult to attract good students to the Normal Schools. And, in the case of students who have successfully completed their course of normal training, it is equally difficult for the Education Department to retain their services as teachers; for the best teachers are continually attracted to other Administrations—more particularly to the Ministry of Justice—by the offer of higher salaries than the Education Department can afford to pay.

The Education Department is still without an Inspectorate, though in this country nothing is more essential to progress than a system of thorough and constant inspection. It need hardly be pointed out how much greater and more urgent is the need of inspection in the primary than in the secondary schools or in the colleges. The secondary schools and the colleges, being centralized in Cairo, are constantly in touch with the high officials of the Education Department, and the teachers generally enjoy a high professional reputation. The primary schools, on the other hand, are scattered over the length and breadth of Egypt from Assouan to Alexandria, and the teachers are, comparatively speaking, less efficient than in the secondary schools. The creation of an efficient Bureau of Inspection in the Education Department would necessitate an increased annual outlay of from 6,000*l*. to 10,000*l*., but until a thorough-going system of inspection is organized, no high degree of proficiency in the primary schools of Egypt can be hoped for.

A third difficulty with which these schools have to contend is the want of funds either to provide premises suitable for scholastic purposes or to keep in repair the buildings at present in use. In Cairo there is hardly a primary school which occupies premises specially built for scholastic purposes. And all over the country the work of teaching is hampered by the school buildings being out of repair.

The Education Department is constantly petitioned to open new schools in various parts of the country, and its steady refusal to grant such petitions has naturally provoked some criticism. So long, however, as funds cannot be found either to pay adequate salaries, or to appoint Inspectors, or to keep school buildings in proper repair, it is obviously impossible to expect the Public Instruction Department to add to its financial and pedagogic embarrassments by opening new schools at the expense of existing educational establishments.

It is true, nevertheless, that the opening of new schools, no less than the amelioration of actually existing schools, must necessarily form an essential part of any comprehensive or intelligent scheme of educational reform. The number of schools under the supervision of the Education Department is notoriously small, and quite inadequate to the needs of the country. In so large and important a city as Alexandria there is only one small school under the Education Department, while the number of primary schools of the higher grade in the whole country is only thirty-three. The small primary schools ("katatib") of the lowest grade, which are supported by private endowment, and attached to almost every mosque in the land, have not yet been brought within the range of the influence of the Education Department. The education given at these schools is far from satisfactory. Yet, but for the numerous little schools of this type the bulk of the population would be without even the most rudimentary notion of reading and writing, or even of their religion. There are not fewer than 8,000 "katatib" in Egypt—attended by about 200,000 little children of both sexes. These schools will never attain any degree of efficiency until each of them is subsidized and is placed under the management of a trained teacher. The cost of undertaking this task is, however, so heavy as to be for the moment prohibitive.

It may now fairly be said that there are no better schools in Egypt than the two large secondary schools under the Ministry of Public Instruction in Cairo, attended by 628 pupils. During the past two or three years these schools have advanced greatly as regards discipline and general tone, as well as instruction. Last year an important step of progress was made by extending the secondary course of study over five years. Previously the secondary school course had been hurried over in four years. The additional year of study should lead to a great improvement upon the results hitherto obtained by the teachers. This extension of the course of study in the secondary schools involved the recasting of the entire programme, and last October a revised syllabus of study for the four years' course in the primary schools, as well as for the five years' course in the secondary schools, was published simultaneously in Arabic, English, and French. On completing their secondary course of study pupils may present themselves for the secondary education certificate, an examination which, like that for the primary education certificate, is open to all comers, wherever educated. Last June ninety candidates presented themselves for the secondary education certificate, thirty-four of whom came from private schools. The appearance made by the candidates at the examination was far more creditable than in any previous year, but out of the ninety candidates only thirty-six obtained the certificate. The large number of failures, however, should not be regarded as implying an unusually low standard of attainment, but rather as due to the difficulty of the test, the range of the subject-matter of this examination being exceptionally wide, and the system of marking strict. Almost all of the successful candidates have been admitted to the professional schools or colleges, or have found employment in the Government Administrations.

### 22.—*The Agricultural College.*

This institution has been in existence for about two and a half years. The course of study extends over four years, so that no students have as yet obtained the College diploma. Several, however, have left, and are employed in agricultural pursuits. One is manager of a butter dairy at Damietta, and supplies this article to

Cairo and Alexandria. Another, who was specially trained in gardening, is in the employ of the Public Works Department. Applicants for admission continue to be more numerous than can be accommodated, a large proportion of them being sons or relatives of landed proprietors.

A chemical laboratory for analytical work, as well as for purposes of instruction, was added to the College in 1892, and has proved of the greatest possible service in connection with manurial experiments and research. Natural history and agricultural museums have also been started. Several students are being trained specially in gardening, analytical chemistry, and natural science, with the object of ultimately assisting the professors in their respective subjects, thus obviating the necessity of making further appointments of Europeans, besides supplying an undoubted want of native specialists.

The manurial experiments on the cotton and sugar-cane crops showed that the application of phosphatic manure would yield a satisfactory return on the outlay. The cotton crop was increased by 1½ cantars per acre over unmanured parts, and the sugar-cane had a much higher percentage of saccharine matter than that treated with farm-yard manure. Several leading cultivators will experiment this season with the manures which have given good results. Mr. Williamson Wallace, the Director of the College, does not recommend the abandonment in any large measure of native methods, but he has found the use of European implements, especially in the cultivation of cotton land, to be a great saving of labour, and he feels confident that they will ultimately be introduced by the larger proprietors, although many implements will be found too expensive for small holders. The students of the third year work with their hands two hours every morning at butter-making, ploughing, mowing, and all farming operations, so that when they leave they will be able to give practical illustrations of how to use the European implements found of advantage in this country.

His Highness the Khedive, who takes the greatest interest in all agricultural improvements, has ordered for his farm at Koubeh much that has proved successful at the College, including dairy utensils of the most recent type, European implements for cultivation, self-binding reapers, a threshing machine for steam power, and appliances for modern bee-keeping. This action on the part of His Highness will undoubtedly do much both to popularize the College and to introduce improved methods of agriculture.

I should mention that the creation of this institution is in no way due to English influence. It was the spontaneous creation of the Egyptian Ministers themselves. At the outset, some competent and impartial authorities expressed doubts as to the utility of the institution. These doubts are, I think, in a fair way to be removed. There is every prospect that the Agricultural College will prove a most useful institution. I have certainly been most favourably impressed with all I have seen of the working of the College, and I find that the same impression has been produced on the minds of others, who can speak with greater authority on agricultural training than any to which I can pretend.

### 23.—*Slavery.*

The number of slaves who apply for certificates of freedom to the Manumission Bureaux is steadily decreasing. Thus, in 1890, the number was 1,400; and in 1891, 816. In 1892 only 422 applications were received.

These figures point to the fact that not only is the Slave Trade practically extinct in Egypt proper, but that slavery will probably in course of time disappear. I attribute this effect not only to the preventive measures which have been taken during the last ten years, but also to the fact that the facilities given everywhese to the slaves for obtaining their manumission papers have made the acquisition of slaves such a hazardous investment that most people prefer either to engage hired servants, or to induce the slaves they have already in their possession to remain with them by offering them monthly wages and by treating them well.

It may be confidently asserted now that those slaves who have not yet taken their papers of manumission do not wish to do so, and remain slaves because they prefer to remain with their masters.

The moral change that has taken place in the minds of the population here is best exemplified by the fact that a number of slaves now leave their masters and do not even take the trouble to apply for their papers, such is the general conviction that nobody will try to bring them back into slavery.

From time to time a few slaves are smuggled into Egypt by Bedouins living on the borders, but their number (perhaps not ten in the year) is insignificant. They are seized at once, and the people who bring them or buy them are caught and brought before the court-martial.

During the year 1892 the Egyptian Government granted the money necessary for the creation of a Camel Corps for the prevention of the smuggling of slaves from the Soudan across the Red Sea to the Hedjaz.

As soon as the Camel Corps was raised, strong patrols were sent from the Nile, and from Mersa Halaib, a harbour on the Red Sea coast. Captain Cotton, who was appointed Inspector for the Red Sea coast, has been able since to report that, from the time the Slave Trade Camel Corps made its appearance in these regions not a single caravan has been known to take this route; so that the object in view in forming this Camel Corps has been obtained.

As the pilgrim season has now begun, renewed activity is to be expected from the slave-traders, as slaves will be in great demand in Jeddah. All the necessary measures to meet the circumstances of the case have been taken,

This Camel Corps only controls the country between the Nile and the Red Sea coast north of Suakin.

There is a district south of Suakin still unprotected, viz., that which lies between Suakin and the Italian territory.

As the caravans find it impossible to pass north of Suakin owing to the presence of the Slave Trade Camel Corps, they have again taken the route south of Suakin, and it may perhaps become necessary to increase the Camel Corps in order to enable an effective watch to be maintained over this district.

## 24.—*Conclusion.*

The facts which I have thus had the honour to submit to your Lordship are sufficient to show that the past year—the first under the rule of the present Khedive—has been one of steady progress. So long as the present political situation undergoes no radical change, the taxpayers of Egypt may feel assured that the burdens of which they have been relieved will not be reimposed. More than this, they may look forward with some confidence to the possibility of further fiscal relief being accorded to them in the future. The foreign creditors of Egypt, on the other hand, may feel assured that their interests are secure. On all sides there are indications that the wealth and material prosperity of the country is increasing.*

I have dwelt more especially on the financial situation of the country because reforms in almost every other branch of the Administration depend mainly on the condition of the Treasury. All these reforms require money, and they can only be carried out gradually as money becomes available.

The voices and true opinions of the mass of the people of this country are little heard. My belief, however, is that they appreciate the benefits which have accrued to them during the last few years, and that they would be unwilling to see any immediate change in the present régime.

I have, &c.
(Signed) CROMER.

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* In addition to the proofs of this fact already given in this Report, I may mention a significant circumstance which came to my knowledge whilst the Report was in course of preparation. Some three years ago the Daïra Administration offered a plot of land for sale at a price of 34*l.* an acre, but found no purchaser; a few days ago the same land, which had undergone no special improvement in the interval, was sold by auction for 60*l.* an acre. There is no more sure test of whether capital is being accumulated in Egypt than the price of land. Most natives of the country who wish to invest money will buy land in preference to seeking any other form of investment.

# EGYPT. No. 3 (1893).

REPORT on the Finances, Administration, and Condition of Egypt, and the Progress of Reforms.

[In continuation of "Egypt No. 3 (1892)."]

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*Presented to both Houses of Parliament by Command of Her Majesty. March* 1893.

POST OFFICE (INSURANCE OF PARCELS, EGYPT).

# AGREEMENT

## SUPPLEMENTARY TO THE CONVENTION CONCLUDED ON THE 18TH AND 26TH OF JUNE 1885, CONCERNING THE EXCHANGE OF POSTAL PARCELS

BETWEEN THE

## POST OFFICE OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND

AND THE

## POST OFFICE OF EGYPT.

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Presented to both Houses of Parliament by Command of Her Majesty.

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/ /

# AGREEMENT supplementary to the CONVENTION concluded on the 18th and 26th of June 1885, concerning the EXCHANGE of POSTAL PARCELS between the POST OFFICE OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND and the POST OFFICE OF EGYPT.

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## ARTICLE I.

1. On and after the 1st of January 1894, the postal parcels exchanged between Great Britain and Egypt under the Convention of the 18th and 26th of June 1885, between the Post Office of the United Kingdom of Great Britain and Ireland and the Post Office of Egypt, may be insured. This provision will at the outset apply exclusively to parcels transmitted by way of Gibraltar.

2. The two Administrations shall mutually serve as intermediaries for the exchange of insured parcels to and from the other countries with which they respectively maintain similar exchanges. They shall communicate to each other the amount of the insurance fee to be credited in each case and the other conditions of the service.

## ARTICLE II.

The maximum amount for which parcels exchanged between the two countries may be insured is 50*l*. sterling in the United Kingdom and 50*l*. Egyptian in Egypt.

## ARTICLE III.

The insurance fee, which shall be paid at the same time as the postage, shall be in the United Kingdom 2½*d*. for each 12*l*. sterling, or fraction of 12*l*., of insured value, and in Egypt one piastre for each 12*l*. Egyptian, or fraction of 12*l*. Egyptian, of insured value.

## ARTICLE IV.

The insurance fee for each 12*l*. sterling or 12*l*. Egyptian of insured value, levied on parcels posted in the United Kingdom addressed to Egypt, or posted in Egypt addressed to the United Kingdom, shall be apportioned as follows :—

To the office of origin, 1*d*.
To the office which provides the sea service, 1*d*.
To the office of destination, ½*d*.

## ARTICLE V.

If it shall be subsequently determined to allow the insurance of parcels exchanged between the United Kingdom and Egypt by way of France and Italy, the two Administrations shall fix by common consent both the amount of the insurance fees to be paid by the senders of such parcels and the apportionment of those fees.

## ARTICLE VI.

On every insured parcel sent under this Agreement the Administration of the country of origin may levy the following charges, to be paid by the sender in addition to the insurance fee provided for in the preceding articles:—

1. A registration fee not exceeding 2½*d*., or one piastre, for each parcel.

2. A supplementary charge to complete the insurance of the parcel against the risks, arising from causes beyond control (*force majeure*), which are not covered by the insurance fee fixed in the foregoing Article III.

The registration fee and the supplementary insurance fee shall be retained by the office which levies them; and the office levying the latter fee on any parcel is alone liable to give compensation for loss or damage arising to that parcel from causes beyond control during the whole course of transmission.

### ARTICLE VII.

When an insured parcel is re-directed or is returned to the office of origin, a new insurance fee is collected from the addressee or the sender, as the case may be. So far as the relations of the two Administrations are concerned, the amount of the insurance fees on re-directed or returned parcels and the apportionment of such amount shall be regulated in the same manner as the amount and apportionment of the fees levied on other parcels passing between the two countries.

### ARTICLE VIII.

1. Compensation for the loss or damage of insured parcels shall be paid in accordance with Article VII of the Convention of the 18th and 26th of June 1885, but the compensation paid in the case of any one parcel shall not exceed the sum for which it has been insured.

2. If the Administration of the country of origin has elected under the foregoing Article VI to levy a supplementary charge to complete the insurance of parcels against the risks arising from causes beyond control (*force majeure*), the fact that the loss or damage of a parcel, on which such a fee has been levied, has arisen from causes beyond control does not relieve the Administration in question from the liability to pay compensation.

### ARTICLE IX.

In the case of all parcels containing coin, objects of gold or silver, or other precious articles, exchanged between the United Kingdom and Egypt, insurance is obligatory. If such a parcel is forwarded uninsured, the Administration which delivers it is entitled to collect the proper insurance fee from the addressee, and to retain the same.

### ARTICLE X.

No parcel may be insured for an amount above the real value of its contents. In case the sender of an insured parcel, with intent to defraud, declares the contents to be above their real value, he loses all claim to compensation, and the enforcement of this rule does not prejudice any judicial proceedings of which the law of the country of origin may admit.

### ARTICLE XI.

The provisions of the Convention of the 18th and 26th of June 1885 remain generally applicable to insured postal parcels. Moreover, the following additional detailed regulations are applicable to such parcels:—

(1.) An insured parcel must bear, on the cover a statement of the amount for which it is insured; and no erasure or addition, even if certified, is allowed. When this statement is not made in English money, the sender or the Post Office of the country of origin must indicate by new figures, placed beside or below the others, the equivalent of the amount in English money.

(2.) An insured parcel must be so packed as to make it impossible for the contents to be tampered with without leaving an obvious trace of violation. It must also be sealed by means of sealing-wax, lead, or otherwise, with some special impress or mark of the sender.

(3.) The exact weight of an insured parcel in kilogrammes and grammes must be entered by the office of origin on the cover of the parcel.

(4.) Each insured parcel must bear a red label with the word "insured" or "valeur declarée" upon it.

(5.) The labels on insured parcels containing coin, articles of gold or silver, jewellery, or other precious objects, must be so placed that they cannot serve to conceal injuries to the cover. They must not be folded over two sides of the cover so as to hide the edge. The address in such cases must be written on the actual covering of the parcel.

(6.) The insured parcels shall be entered together on a separate parcel-bill, which shall contain columns for the entry of the weight of each parcel, the amount for which it has been insured, and the number of rates (at 2½*d.* per rate) paid for insurance.

Done in duplicate at London on the 29th day of November 1893, and at Alexandria on the 14th day of December 1893.

(Signed) ARNOLD MORLEY. (Signed) Y. SABA.

L.S. L.S.